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BEFORE THE ARIZONA CORPORATI

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3 IN THE MATTER OF THE FORMAL )  
COMPLAINT OF SPARTAN HOMES )  
4 AND CONSTRUCTION, INC., )  
5 COMPLAINANT, )  
6 vs. )

DOCKET NO.  
WS-03478A-08-0256

7 FAR WEST WATER AND SEWER, INC., )  
8 )

EVIDENTIARY  
HEARING

8

9 At: Tucson, Arizona

10 Date: January 6, 2010

11 Filed: JAN 21 2010

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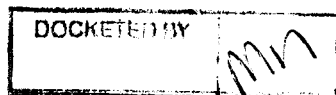
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Arizona Corporation Commission  
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Prepared for:

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1	INDEX TO EXAMINATIONS	
2	WITNESS	PAGE
3		
4	BRIAN HOUSEHOLDER	CONTINUED
5	Further Cross-Examination by Mr. Black	324
	Further Examination by ALJ Martin	348
6	Redirect Examination by Mr. Crockett	352
	Further Examination by ALJ Martin	365
7		
8	VICKI WALLACE	
9	Direct Examination by Mr. Crockett	368
	Cross-Examination by Mr. Black	390
10		
11	ANDREW J. CAPESTRO	
12	Direct Examination by Mr. Black	394
	Cross-Examination by Mr. Crockett	403
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## INDEX TO EXHIBITS

NO.	DESCRIPTION	IDENTIFIED	ADMITTED
A-25	4/14/2005 letter to Yuma County Development Services from Mark Kaveney	459	460
A-29	Arizona Corporation Commission Utilities Division Main Extension Agreements, R14-2-406	372	393
A-30	Far West Water & Sewer, Inc. Wastewater Division organizational chart	469	471
A-32	Consent Order P-105-06	429	446
A-33	Decision 71447	449	451
A-35	11/18/2009 letter to Commissioners from Norman James	445	446
A-45	Spartan Homes & Construction first set of data requests dated October 21, 2008 SPAR 1.1	355	358
A-46	Life Lines article titled "Company President Convicted in Employee On-the-job Deaths"	421	withdrawn 428
R-1	Deposition of Capestro	30	403

1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before the  
3 Arizona Corporation Commission, in Hearing Room 222 of  
4 said Commission, 400 West Congress Street, Tucson,  
5 Arizona, commencing at 9:00 a.m., on the 6th day, of  
6 January, 2010.

7

8 BEFORE: BELINDA A. MARTIN, Administrative Law Judge

9

10 APPEARANCES:

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23

24

KATE E. BAUMGARTH, RPR  
Certified Reporter  
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25

1 ALJ MARTIN: Let's go on the record.

2 And this is the continuation of the hearing in  
3 the matter of the formal complaint of Spartan Homes &  
4 Construction, Inc., complainant, versus Far West Water &  
5 Sewer, respondent, in docket No. WS-03478A-08-0256.

6 When we left off yesterday I believe, Mr. Black,  
7 you were doing cross-examination of the Mr. Householder;  
8 correct?

9 MR. BLACK: Yes, Your Honor.

10 ALJ MARTIN: All right. Please continue.

11 MR. BLACK: Thank you.

12

13 BRIAN HOUSEHOLDER,  
14 called as a witness herein, appearing on behalf of the  
15 Complainant, having been previously duly sworn by the  
16 Certified Court Reporter, continued to be examined and  
17 testified as follows:

18

19 FURTHER CROSS-EXAMINATION

20

21 Q. (BY MR. BLACK) Mr. Householder, page 7 of the  
22 complaint you allege -- and I will quote -- "In reliance  
23 upon the representations of Far West representative that,  
24 one, Far West had treatment capacity to provide sewer  
25 service to the Spartan property; and two, Far West would

1 provide sewer service to the Spartan property without  
2 requiring a payment by Spartan of hook-up fees.

3 Householder agreed to obtain sewer service from --

4 A. Excuse me. Did you say on my compliant?

5 Q. Yes, in the copy of your complaint, the formal  
6 complaint on page 7.

7 A. I'm sorry. I had the wrong document or  
8 paperwork.

9 MR. CROCKETT: Your Honor, if I might approach, I  
10 will hand the witness --

11 THE WITNESS: I think it was up here yesterday  
12 and then it was taken back.

13 Page 7?

14 Q. (BY MR. BLACK) Yes, beginning at line 19.

15 A. Okay.

16 Q. Okay. Thank you. And for easy reference, I will  
17 start over again and read that.

18 At page 7 you allege that, "In reliance upon the  
19 representations of Far West representatives that, one, Far  
20 West had treatment capacity to provide sewer service to  
21 the Spartan property; and two, Far West would provide  
22 sewer service to the Spartan property without requiring a  
23 payment by Spartan of hook-up fees. Householder agreed to  
24 obtain sewer service for Spartan property from Far West  
25 foregoing its legal right to install individual on-site

1 septic systems within Sierra Ridge Unit 1, which had  
2 already been approved pursuant to the approval to install  
3 individual on-site septic systems."

4 I would like to explore the issue with your  
5 intention that you had a legal right to install septic  
6 systems.

7 Is it your position that --

8 MR. CROCKETT: Your Honor, I'm going to raise an  
9 objection to the extent that Mr. Black is going to be  
10 asking questions about the legality of specific actions.

11 Mr. Householder, obviously, is not an attorney  
12 and isn't qualified to testify regarding --

13 ALJ MARTIN: I think -- and perhaps Mr. Black can  
14 correct me -- I understand his question to go more towards  
15 frame of mind as to what he thought he could be as opposed  
16 to whether or not he knew what he could do was legal or  
17 not legal.

18 MR. BLACK: Correct, Your Honor. Yesterday there  
19 was testimony. Mr. Householder provided testimony that he  
20 forewent the option to install septic tanks and instead  
21 went with Far West Water & Sewer. I'm just exploring as  
22 to whether he really did have an option to install sewer  
23 at the property at the time he made the decision to go  
24 with Far West Water & Sewer.

25 ALJ MARTIN: And it's not your intent to make him



1 form an opinion as to whether or not he had a legal right?

2 MR. BLACK: Correct.

3 ALJ MARTIN: Okay. I will allow the question.

4 Q. (BY MR. BLACK) Do you believe that the  
5 October 4, 2008 County approval gave you the green light  
6 to move forward with installing septic tanks?

7 A. I believe that was the preliminary step in the  
8 process to be able to utilize septic tanks.

9 Q. Okay. And that was consistent with your  
10 testimony at page 62, line 15 of your deposition? And I  
11 will ask you to read --

12 ALJ MARTIN: What page?

13 Q. (BY MR. BLACK) At page 62, beginning on line 15.  
14 If you can read that into the record beginning at page 62,  
15 line 15, to page 63 line 1.

16 A. On line 15 it says, "This is the document."

17 Which document are we referring to when I say  
18 that? Can I go back a few pages to look?

19 Q. Sure. That would be exhibit -- actually --

20 ALJ MARTIN: I think you describe it in the  
21 testimony.

22 THE WITNESS: It is the '04 letter here.

23 Q. (BY MR. BLACK) Yes, that would be Exhibit  
24 No. 6 --

25 A. Correct.

1       Q.     -- to your testimony, which is the October 4th,  
2     2008 letter from the County.

3       A.     So we are on line 15?

4       Q.     Yes, and if you could read into the record from  
5     line 15 to the top of the page on line 1.

6       A.     "This is a document that I referenced earlier  
7     pertaining to that Edwina Vogan exhibit. And this  
8     document here is the document whereby Rick Stacks -- there  
9     was a question of whether or not he had a delegated  
10    authority to be the signer to allow septic tanks and that  
11    was. And then it was to go to Phoenix or not or the  
12    Phoenix department of ADEQ was to sign it first and Rick  
13    was to sign it second.

14            "So this was a part of that little circle there  
15    where there was some confusion between Yuma County Health  
16    Department, Rick Stacks specifically, and the Phoenix  
17    department of ADEQ as to who had the authority to" -- and  
18    then I was interrupted -- "This apparently is a form," was  
19    a question. And then I said, "to start the process."

20       Q.     So you did require ADEQ approval as well,  
21     correct, to install the septic systems?

22       A.     Looking back on it and then understanding the  
23     process -- the way I look at it now and the way it was  
24     understood at that time, I knew that this document was the  
25     first piece of the puzzle to work towards being able to

1 utilize the septic.

2 Q And you did receive ADEQ approval on December 3,  
3 2004, which is marked as Exhibits 7 and 8 to your  
4 deposition; is that correct? For the record Exhibit 7 is  
5 the December 3, 2004 facsimile from Ms. Edwina Vogan to  
6 Mr. Stevens at Yuma Territorial Engineering enclosing the  
7 2008 review for the Sierra Ridge subdivision. And  
8 Exhibit 8 is a Water Quality Management Plan Consistency  
9 Review form signed by Ms. Edwina Vogan on December 3,  
10 2004.

11 You did receive -- so you subsequently received  
12 ADEQ approval; is that correct?

13 A Yes. Exhibit 7 and Exhibit 8 are the documents  
14 that came from the Phoenix department of ADEQ.

15 Q But isn't it true, Mr. Householder, that the  
16 approval also had conditions on that approval?

17 A On December 3rd?

18 Q Yes.

19 A Yes.

20 Q And one of those conditions was that the City of  
21 Yuma would ultimately be responsible for planning because  
22 there was dry sewer included in the approval that ADEQ  
23 provided?

24 A Can I ask you to read me back that question, the  
25 way you phrased that?

1 (Requested portion of the record read.)

2 THE WITNESS: The City of Yuma, I don't know if  
3 they were required for the -- ultimately required for the  
4 planning, but I think they were required by the State of  
5 Arizona to review anything that laid in their -- the  
6 master plan, the overlay of their master plan of our  
7 community, of any subdivision that laid in this area.  
8 They had the obligation to review any subdivision that was  
9 going to be dry sewer.

10 Q. (BY MR. BLACK) At page 50 of your testimony you  
11 read actually into the record what has been marked as  
12 Exhibit 3 to your testimony, which is a November 23, 2004  
13 fax that you received from Ms. Vogan concerning the 208  
14 process. I would just like you to read from lines 13  
15 beginning at "Yuma County" to lines 18 ending in "private  
16 utility."

17 A. "Yuma County has provided their comment and  
18 support for this project due to the nature of proposed dry  
19 sewerage. I need to have an official comment from the  
20 City of Yuma because the project will be located in the  
21 City's planning area, even though the area is currently  
22 being served by a private utility."

23 Q. And when Mr. Capestro further asked you as to  
24 specifically what does it mean concerning the comment that  
25 the City will ultimately be responsible for wastewater

1 management for the area, you provided a response beginning  
2 at page 51, line 18. And if you could read from that -- I  
3 know this is long, and again, this will -- my line of  
4 questioning will stop after we are done with this  
5 particular issue.

6 If you could read into the record beginning at  
7 line 18 to line 22 on page 52.

8 A. "ANSWER: I guess this is a statewide  
9 requirement. I guess each municipality has to have a  
10 plan, a master plan, and I think the City of Yuma went out  
11 to at that time was 2010 and they -- and I can't be  
12 specific on this. I'm just speaking in general terms  
13 here. The City of Yuma, when they formulate these plans,  
14 they have to incorporate areas they may annex in the area,  
15 et cetera, et cetera.

16 "So I guess the area of the Foothills is within  
17 this master plan. This is what my understanding was. And  
18 being that this property, specifically this property was  
19 also in this Foothills area that was in the master plan,  
20 if there was anything to be done with dry sewerage, the  
21 City of Yuma would have to look at it. And if it was  
22 going to be a property that they may annex, then they  
23 would have a say in, I guess, the process.

24 "Ultimately that was not what the case was. The  
25 City of Yuma contacted me and if I remember right the

1 guy's name was Hank Baer. I think he is a supervisor of  
2 the sewer division. And they said they will not be  
3 annexing anything in that area, that they kind of drew  
4 their line, I think, at 9E or 9 1/2 E, and that was it;  
5 that since they would probably never consider annexing  
6 that portion of the Foothills that they would just sign  
7 off on whatever the ADEQ needed them to sign off on so we  
8 could proceed forward with the private utility company.

9 "QUESTION: Did you contact Mr. Baer?

10 "ANSWER: I can't remember if he called me or I  
11 called him.

12 "QUESTION: Did he ever sign off for ADEQ?

13 "ANSWER: I have no idea."

14 Q. Thank you, Mr. Householder.

15 So as we sit here today do you know whether the  
16 City of Yuma has ever looked at those dry sewerling plans  
17 and provided any authority to move forward with septic?

18 A. That is a loaded question. I will have to answer  
19 that in two different parts here.

20 The City of Yuma had to review this because it  
21 was part of the 208 process. And in the letter from  
22 Edwina Vogan she makes mention of -- I believe it's the  
23 November 23rd document. I don't have it here in front of  
24 me. I'm looking at it.

25 Q. It's Exhibit 3 to your deposition.

1       A.     Okay.   Edwina Vogan of ADEQ makes a statement  
2   here that she's trying to contact Jennifer Albers.   And I  
3   believe Jennifer was the City representative -- was in  
4   charge of their management area.

5             And this letter speaks volumes.   It just  
6   basically says what the process is for this line of  
7   questioning.

8             So whether or not they looked at it, my opinion  
9   is that they had to look at it or I would not have got  
10  that 208 finalized from the state level of ADEQ.   That to  
11  me is part of the process.

12       Q.     Well, let's go to Exhibit No. 7 in your  
13  testimony.   At page 2 of that doesn't it say that the --  
14  at page 2 at the very bottom under B and C, under  
15  explanation, it says, "The proposed subdivision is located  
16  in the planning area of the City of Yuma, the DMA, and  
17  also in the area of the Designated Planning Agency, Yuma  
18  County.   The City and Yuma County collaborate on planning  
19  decisions for the planning area.   For further discussion  
20  of this project, see category other."

21             Are you telling me then that at the time you  
22  received the letter from Ms. Vogan -- or excuse me -- the  
23  approval from Ms. Vogan you had assumed that the City had  
24  already signed off on the septic -- use of the septic?

25       A.     Yes.   And, you know, I would like to make sure we

1 are real clear. I'm not working for ADEQ, and so I don't  
2 have specific knowledge of who they contacted at the City  
3 of Yuma and these planning agencies.

4 To answer your question, I would have to assume  
5 that because of the dialogue between Edwina Vogan and Yuma  
6 Territorial and myself and the contact that I had with the  
7 City of Yuma and the contact I had with Rick Stacks, when  
8 I received the 208 form signed, sealed, and delivered  
9 giving us approval to move forward with septic tanks, that  
10 they would have had to be involved with the City of Yuma  
11 at that time.

12 So, you know, I'm not sitting in the room and I'm  
13 not a part of the telephone conversations between the City  
14 of Yuma and ADEQ, but I would believe that Edwina Vogan  
15 would follow protocol and make sure that she sent that  
16 document down approved and she would have communicated  
17 with the City of Yuma.

18 Q. But in your deposition you expressed concern at  
19 that time for further delay.

20 A. I'm sorry.

21 Q. This would begin at page 53 of your deposition,  
22 and this would be beginning at line 12. And I will go  
23 ahead and read that into the record.

24 "QUESTION: When did you have that conversation  
25 with Mr. Baer saying they were not going to annex?



1           "ANSWER: Just shortly after that letter. Well,  
2 let's put it this way, he didn't specifically say they  
3 wouldn't annex that because he can't speak on behalf of  
4 the annexation. He can only speak on typically where they  
5 are going to serve sewer in that region out there.

6           "And, you know, when I spoke to him, I don't know  
7 if he had to report to somebody else within the City of  
8 Yuma or not. He just called me up and just said that this  
9 is something that they are not even eyeballing, so it's  
10 not going to be a problem for them to sign off on it.

11           "My concern was at that time I remember just  
12 thinking, okay, is this going to take a month, six months  
13 for these guys to get this thing through? How long is  
14 this going to take, because it went pretty -- you know,  
15 the time frame was relatively short with Rick Stacks and  
16 Francisco handling the paperwork for the septic and then  
17 all of a sudden we have this thing come up, and I didn't  
18 know how long the delay was going to be. Obviously I  
19 wouldn't want to sit on it for six months to a year and  
20 have to go through a big process.

21           "QUESTION: When you are talking about how long  
22 it would take, are you talking about approval of your  
23 septic tanks or are you talking about whether or not they  
24 are going to take it over with the new plan?

25           "ANSWER: No, the approvals for the septic

1 tanks."

2           So at that time after you received the letter you  
3 expressed concern that this was going to take further  
4 delay by the City of Yuma.

5       A.     Which letter? The November 23rd letter?

6       Q.     Correct. I think it was a facsimile.

7       A.     I don't think it is really accurate to say at the  
8 time or after I received the letter that I was concerned  
9 it would take a long time. It was probably just shortly  
10 before the letter.

11           And the reason I say that is, at this point in  
12 time ADEQ was really backed up with just volumes of  
13 paperwork for subdivisions. It was a very busy time in  
14 the state of Arizona, as we all know.

15           They -- any paperwork that went through ADEQ  
16 could be anywhere from three to six months or longer,  
17 depending on what you were trying to process through ADEQ.

18           So ADEQ had hired a firm called Willdan. It's an  
19 engineering firm that they use to review certain  
20 paperworks that come through their system. And the 208  
21 forms were some of the forms that ADEQ allowed Willdan to  
22 review on their behalf and to expedite the time frame.

23           So, you know, I'm looking at a window on time  
24 with my lender that, you know, we have an appraisal coming  
25 in for our acquisition and development loan. And this is

1 the loan that you take your land from the land loan and  
2 you add it to your development costs and then they lump it  
3 into one big loan. And that is your final loan.

4 So our appraisal came in. It was in the process,  
5 and that came in in November or December of 2004.

6 So we have a certain window of time where -- when  
7 I say we, I mean me and the bank, where would like to  
8 execute this loan.

9 And what has been mentioned here is I was working  
10 with First Bank Yuma. They are a start-up bank. They  
11 were about three years old. And they have limitations on  
12 how much they could loan for certain projects.

13 First Bank Yuma had a bank in Texas that was  
14 involved with this final loan. So there was a time frame  
15 by which we wanted to start this process. Okay? So I was  
16 concerned about this delay with ADEQ running into several  
17 months because they were -- you know, everything was  
18 taking such a long time to process. And so this is why  
19 I -- you know, I'm judging this the way I was at the time.

20 Well, let me just complete this. Okay?

21 So when Willdan came up as an option, I paid the  
22 extra fee to have Willdan get this through. But there was  
23 still a line of communication there with the City of Yuma  
24 that had to be involved. Well, Jennifer Albers, it turns  
25 out she was either on vacation or sick. I think it was

1 vacation for a week, and then she was sick for a week.  
2 And then there was a question of whether or not Willdan  
3 was going handle the paper or Edwina Vogan in this  
4 process.

5           So, you know, I was concerned about my loan. And  
6 so when this -- all this dialogue came about, you know, my  
7 mind-set was, man, I hope this doesn't go past this time  
8 frame that I have with my lender and this lender from  
9 Texas. Because we have this loan commitment here from  
10 this lender, and I don't want it to go away. Your  
11 appraisal is only good for so long after you get it. It  
12 was either three or six months. So I didn't want to pay  
13 another \$2500 for an appraisal and start that process  
14 again. So obviously I'm going to be concerned about, you  
15 know, the time frame.

16           And so just to finish up, that is where this  
17 dialogue comes in about, you know, concern and time frame.  
18 And this bank process was -- and this appraisal process  
19 wrapped up with it.

20       Q.     And let me add, those are legitimate concerns.  
21 I'm not attacking any of the concerns you had at that  
22 time. I'm just trying to explore your frame of mind at  
23 the time you made the decision to not go with septic and  
24 to go and move forward with sewer.

25           You will concede, though, that going with the

1 sewer option did save you money with respect to the  
2 project; is that correct?

3 A. It was less expensive to go with the sewer  
4 project, yes.

5 Q. And I believe that yesterday you testified that  
6 the individual septic systems would cost approximately 18- to  
7 \$2500 per lot?

8 A. That's correct.

9 Q. And I believe Mr. Galindo testified that that  
10 cost estimate was more along the lines of \$5,000 to  
11 \$7,500.

12 If you take your low estimate of \$1800 and his  
13 high estimate of \$7500, you are looking at a spread of  
14 between \$200,000 and almost \$850,000 that you would have  
15 saved.

16 A. Yes, and I would sit here today and dispute  
17 Mr. Galindo's testimony because I don't think he has ever  
18 contracted or even constructed a septic system, and I  
19 have. So I know what they cost.

20 Q. And I apologize. I didn't mean to talk over you.  
21 I'm sorry.

22 A. And so, you know, to go with -- to answer your  
23 question, if you go with the low figure there, on the  
24 surface, yes, you could say I could save that money, but  
25 the bigger picture, the way I look at it is, I lost 33

1 lots also. Okay? So you take the yield on the loss of  
2 the lots and you take, you know, what it might have saved  
3 me a little bit with the sewer, and I'm still upside down.

4 So there is not a wash there as far as I'm  
5 concerned.

6 Q. So it's your position today that as of January 1,  
7 2005 you could have moved forward with installing septic  
8 tanks at the Sierra Ridge development?

9 A. On January 1st of 2005?

10 Q. Yes.

11 A. I wouldn't commit to that date at that time.

12 Q. Okay. How about at the time you allegedly signed  
13 the line extension agreement with Far West Water & Sewer?

14 A. And I wouldn't commit to that date at the time.

15 I would commit to -- I could have utilized  
16 septic tanks when I was ready to construct a house. I'm not  
17 going to mix time frames with the extension agreement and  
18 my ability to use septic tanks because that is not -- those two  
19 don't work hand in hand with what we are talking about  
20 right here.

21 Q. Well, what I'm trying to get at is yesterday you  
22 testified that you had no choice but to go with the sewer  
23 project, that the septic option was foreclosed to you,  
24 that as soon as there was sewer capacity you could not go  
25 with the septic option.

1 Is that correct?

2 A. Yes, that is not my decision. As I stated, that  
3 is actually an ADEQ, State level and a Yuma County level  
4 decision. And, you know, like I stated yesterday, they  
5 are the authorities. And if that is the criteria that I'm  
6 required to follow, then I have to follow it. I don't  
7 have an option there.

8 Q. Is it a -- was it an independent decision or is  
9 it a rule, if you know?

10 A. It's a rule. And the reason I say this is when I  
11 first bought the property or was interested in the  
12 property, I assumed because of all the developing around  
13 the property I was going to septic systems and I was  
14 prepared to go forward with that. That is on day one.

15 On day one or day two when I talked to the County  
16 about the property and doing some zoning questions and  
17 stuff like that, I was informed that their sewer right on  
18 Avenue 12E -- and if -- I can't remember the footage --  
19 but it's an ADEQ requirement, State law, that if you have  
20 access to sewer and you are within so many feet of the  
21 sewer main or a collection line, that you are required to  
22 utilize the sewer. And so that is when we started this  
23 sewer process. Okay?

24 So Sierra Ridge didn't just jump in and run three  
25 miles away from the location. It's still sitting there,

1 and sewer is still sitting there. So when the sewer  
2 company comes to me and says, we have capacity for you,  
3 once they offer me capacity, I have no option to use  
4 septic anymore.

5 Now, the process that I was going to utilize the  
6 septic doesn't go away. The signatures on the documents  
7 from all the agencies that allow me to do it don't go  
8 away, but the option goes away because Far West Water &  
9 Sewer took it away from me by offering me the capacity.  
10 So I'm stuck. I have to use sewer at that time.

11 Q And other than Mr. Kaveney's representation to  
12 you that Far West Water & Sewer had capacity, did you  
13 receive any other -- any other document from a State,  
14 local agency that corroborated that representation?

15 A No, and at that time I wouldn't have known how to  
16 acquire that information.

17 I will say this, since I'm a little bit more  
18 educated about the situation and the paperwork and the  
19 process, you know, the private utility companies get to  
20 basically self-manage themselves. So I don't know if I  
21 could have contacted anybody to ask them, hey, is there  
22 capacity at this sewer plant? I think they would have  
23 redirected me to go back to the utility company.

24 So I think it's a circle there that unfortunately  
25 exists, and had I known then what I know now, I think I



1 would have still relied on Far West Water & Sewer and the  
2 sewer capacity assurance form that was given to me and  
3 they endorsed.

4 Q If you had told Mr. Kaveney that you wanted to  
5 proceed with your septic option, do you believe Far West  
6 Water & Sewer could have stopped you from doing so with  
7 the approvals you had?

8 MR. CROCKETT: Objection to the extent that that  
9 calls for a legal conclusion.

10 ALJ MARTIN: I don't know if it calls for a legal  
11 conclusion, but unless there is something in Mr. Kaveney's  
12 deposition --

13 MR. BLACK: Well, Mr. Householder has testified  
14 that once Mr. Kaveney told him that Far West Water & Sewer  
15 had capacity, he was -- he had no right to move forward  
16 with sewer, and that is the --

17 THE WITNESS: Septic.

18 MR. BLACK: Excuse me, septic.

19 ALJ MARTIN: Something like that.

20 MR. BLACK: And that is what I'm trying to  
21 explore with the question.

22 Again, I'm trying to establish whether  
23 Mr. Householder had an option to move forward with septic  
24 or sewer or whether he didn't have an option. And  
25 yesterday he testified that he didn't have an option, and

1 today I think he testified that he somewhat did have an  
2 option. So that is what I'm trying to explore with the  
3 question.

4 ALJ MARTIN: Restate the question again, please.

5 Q. (BY MR. BLACK) Had you moved forward with the  
6 plan to install septic systems at your property, could Far  
7 West Water & Sewer do anything to stop you from doing so?

8 ALJ MARTIN: Okay. I will allow it.

9 THE WITNESS: Well, I guess you are asking me to  
10 make the assumption that Far West Water didn't give me a  
11 sewer capacity assurance form and you are making me -- I'm  
12 assuming that you are giving me the -- you are letting me  
13 work off an assumption here, right?

14 Q. (BY MR. BLACK) No, I'm not letting you work off  
15 an assumption because the capacity sewer form was given to  
16 you after you made the decision to go with the sewer and  
17 to forego septic.

18 ALJ MARTIN: I'm not sure that is what his  
19 testimony was.

20 Q. (BY MR. BLACK) Okay. When did you receive the  
21 capacity assurance form from Far West Water & Sewer?

22 A. It was sometime on or after January 29, 2005.

23 Q. So this was after you had allegedly signed the  
24 main extension agreement?

25 A. I signed main extension agreements on the same

1 day that Mark Kaveney gave me the capacity assurance  
2 forms. I testified to that.

3 Q. You had -- at the time you signed the agreement  
4 with Mr. Kaveney and Far West, did you or did not have the  
5 option to go forward with septic tanks?

6 A. I would have to say at the moment that Far West  
7 Water assured me that they had sewer capacity and we  
8 executed our -- I don't know if the -- because I don't  
9 know the legalities of this -- I don't know if the main  
10 extension agreements are even in this picture right now.  
11 I'm just going to speak now about the capacity assurance  
12 form first.

13 I believe -- and it was my understanding not from  
14 just, you know, I woke up one morning and I knew this --  
15 from Yuma County, ADEQ, that once sewer capacity was  
16 assured by the utility company, that I had to utilize  
17 sewer service. Okay? At that point in time the septic  
18 option is void. It's gone. It's in play up to that  
19 point, but once the utility company offers me service,  
20 sewer service and they are willing to provide hookups to  
21 my houses, I cannot utilize septic tanks.

22 Q. Thank you. Well, let me follow up on that.

23 You say once the utility offers service.

24 Isn't it once you accept service?

25 You accepted the offer for Far West Water & Sewer

1 to provide service on Mr. Kaveney's representation that he  
2 had sewer capacity. You accepted that and said, I will go  
3 with sewer; is that correct?

4 A. Well, you are calling it an offer. I don't  
5 really know if -- because I think we are getting into some  
6 legality stuff here that I don't know what these are  
7 technically, but you are talking about an offer. And you  
8 are saying that I accepted -- you are saying that I  
9 accepted an offer. Okay?

10 I'm saying that you can call it an offer. You  
11 can call it an assurance. You can call it provide you  
12 hookups. What I'm saying is that the utility company came  
13 to myself, and they said, we are going to provide you  
14 sewer. Okay? They provided a document that said they  
15 assured there was capacity to provide sewer, and at that  
16 point in time it made perfect -- I don't want to say  
17 sense, but it made -- I guess you could say it made  
18 perfect sense that I had to accept their sewer service  
19 because that is what my understanding was of what the rule  
20 was.

21 Once you -- and I can say this -- let's take the  
22 sewer off the table for right now. Okay? Let's take it  
23 out. You are pushing it, so let's take it out.

24 If I had built a home and I had put a septic tank  
25 on it, okay, and I hadn't had any sewer capacity

1 assurance, I had no sewer service from Far West. Okay?  
2 And after that first home was built Far West comes to me  
3 and says, we have sewer capacity. Okay? Every home after  
4 that would have had to be on sewer. I would have had to  
5 go abandon that septic. I would have abandoned that line  
6 to the house, and I would have to tie that particular lot  
7 back into the sewer plant. Okay?

8           So if I had to do it after I started a septic  
9 system situation, and obviously it makes sense that once  
10 it's offered to you and it's extended to you by the  
11 utility company, it's a requirement at that point in time,  
12 so the option of septic is off the table.

13       Q.     It was a requirement in your December 3, 2004  
14 approval from ADEQ; correct?

15       A.     What requirement was that?

16       Q.     That the subdivision be hooked up to sewer as  
17 soon as sewer became available; is that correct?

18       A.     Yes, as soon as the utility company could serve.

19       Q.     And that is the reason you approved it, is  
20 because you had dry sewerage that was ready to hook up in  
21 the proposal?

22       A.     In the December 3rd proposal?

23       Q.     Did your plan to install septic tanks also  
24 include a component that required you to build dry  
25 sewerage?

1       A.     Yes.  If I didn't do the -- if I refused to do  
2     it, they wouldn't have given me the approval to go forward  
3     with septic at all.

4               MR. BLACK:  Mr. Householder, I have no further  
5     questions of you.  Thank you.

6               ALJ MARTIN:  Thank you both.  Mr. Crockett and  
7     Mr. Black have been very thorough, but I will take just a  
8     moment and beat the dead horse that is in the middle of  
9     the room here.

10

11

FURTHER EXAMINATION

12

13       Q.     (BY ALJ MARTIN)  Just to be clear, it's your  
14     belief for the subdivision you were building, at the time  
15     that the Far West representative said to you we have sewer  
16     capacity available, because of certain ADEQ or Yuma County  
17     regulations or requirements, you had to proceed with sewer  
18     and could not -- could no longer use septic; correct?

19       A.     That's correct.  And I believe that if I had went  
20     down and tried to obtain a building permit utilizing  
21     septic and not sewer service, that it would have been  
22     kicked back and they would have said they have capacity at  
23     the plant, they issued you this certificate, you have to  
24     hook up to sewer.  Because ultimately ADEQ's position is  
25     they are trying to eliminate the use of septic tanks as

1 much as possible.

2 Q. You mentioned that there are a number of other  
3 subdivisions in the area that are hooked up to septic,  
4 which is why when you initially began the project -- I  
5 believe it was your testimony -- that you assumed you  
6 would be using septic; correct?

7 A. That is very correct, yes.

8 Could I expand on that a little bit?

9 Q. Sure.

10 A. If you were standing on the property of Sierra  
11 Ridge as we speak today, there is Avenue 12E that runs  
12 this direction adjacent to the property. On the east side  
13 of Avenue 12E, which is where the subject property, Sierra  
14 Ridge, is located, for I believe half a mile or a mile  
15 south -- half a mile or a mile south, one mile to the  
16 east, to Foothills Boulevard, that one square mile or one  
17 and a half square mile is completely on septic. Okay?

18 From Foothills Boulevard proceeding to the east  
19 of Foothills Boulevard to El Camino Del Diablo, which is  
20 probably a quarter to a half a mile, and proceeding south  
21 all the way to 40th Street, which is approximately three  
22 miles, so we have a stretch from Foothills Boulevard all  
23 the way down 40th Street three miles, with the exception  
24 for some newer development that went on on Foothills  
25 Boulevard, like Domino's Pizza, a bank, some of those I

1 understand were connected to some sewer line, but all the  
2 residences there -- I would have to say at least 90 or 95  
3 percent -- there may be an island of 10 or so houses that  
4 were built later -- that whole stretch there is on  
5 septics.

6           If you go to the south of Sierra Ridge, about a  
7 quarter of a mile down south of 40th Street, there is  
8 another section there that is probably one mile by  
9 one mile completely on septic tanks.

10           The balance of Foothills, besides all the new  
11 development out beyond 52nd Street -- 52nd to 56th -- but  
12 from 34th Street all the way to 52nd Street going out to  
13 El Camino Del Diablo, which is about a mile or a mile and  
14 a half by maybe six or eight miles, virtually all on  
15 septic tanks.

16           All the new development is on the outer edge of  
17 the Foothills. That is where all the sewer service is  
18 served in the Foothills.

19           So from Sierra Ridge and Avenue 12E going to the  
20 west, there is an RV park, Rancho Rialto, a couple hundred  
21 spaces. Okay. There is a little bitty subdivision,  
22 Scottsdale Estates, which is about 60 lots, and they  
23 started about at the same time I did. And Rancho Rialto  
24 was a few years before I started my project.

25           That sewer line runs past Yuma east going west to



1 serve Jacobson Companies, towards Palm Shadows sewer  
2 plant. So Palm Shadows is maybe a mile and a half to  
3 maybe two miles -- excuse me -- two and a half to  
4 three miles west of where I'm located.

5 So I didn't know that the sewer -- the main sewer  
6 collector line was in, and because a lot of area right  
7 there next to me was vacant desert, there is a lot of  
8 acreage right there.

9 So across the freeway from where my property is,  
10 where I live, Mesa del Sol, two-thirds of the front  
11 section is between 5 and 30 years old, all on septic  
12 tanks. The outer perimeter of Mesa del Sol is on sewer,  
13 so for me to go in there and assume sewer before septic,  
14 that wasn't even a thought.

15 The long answer to your question is, that is  
16 why -- I'm trying to paint this picture for you that I  
17 thought septic were going to be the -- what was going to  
18 be utilized for the wastewater for each residence.

19 Q. Okay. And I think you just said that those  
20 subdivisions or those developments around you that are on  
21 septic are somewhere between 5 and 30 years old generally  
22 speaking?

23 A. Yeah, maybe a little bit older than five years  
24 because some of those in there are very old. Yes, I would  
25 have to say 5 to 8 or 10 years old and going older. So

1 I'm just right on the edge of that.

2 Q Okay. I think I will leave it. Thank you.

3 ALJ MARTIN: Mr. Crockett, redirect?

4 MR. CROCKETT: Your Honor, just a few minutes, if  
5 I might.

6 ALJ MARTIN: Sure.

7

8 REDIRECT EXAMINATION

9

10 Q (BY MR. CROCKETT) Mr. Householder, yesterday  
11 Mr. Black asked you a question about whether you asked  
12 Yuma Territorial Engineering if your Sierra Ridge  
13 subdivision was within the sewer CC&N for Far West Water &  
14 Sewer.

15 Do you recall that?

16 A Yes.

17 Q Did you rely upon Far West Water & Sewer Company  
18 to tell you whether or not your property was within its  
19 sewer CC&N?

20 A At that time, like I had stated earlier, I didn't  
21 know what a CC&N was. So I would have to rely on the  
22 utility company to know whether or not the subject  
23 property was within their service area or CC&N.

24 Q Was service area a term -- was that terminology  
25 that was familiar to you at the time?

1       A.     That is more along the lines of my familiarity  
2 versus CC&N.

3       Q.     And did you believe that your property was within  
4 the service area of Far West Water & Sewer for sewer  
5 service?

6       A.     I believed that all the way up until September of  
7 2006.

8       Q.     And did Mr. Kaveney ever tell you that your  
9 Sierra Ridge subdivision was not in the service area of  
10 Far West Water & Sewer?

11      A.     He never stated that, no.

12      Q.     Did anyone at Far West Water & Sewer ever tell  
13 you that -- well, let's see.

14             Prior to -- what date did you say that you found  
15 out that you were not in the sewer CC&N?

16      A.     I wouldn't say I found out exactly I wasn't in,  
17 but I was told that I'll more than likely not be in their  
18 CC&N, and that would have been either September or October  
19 2006.

20      Q.     Prior to that date had anyone at Far West Water &  
21 Sewer ever tell you that your Sierra Ridge subdivision was  
22 not in the service area for sewer?

23      A.     No.

24      Q.     Did anyone at Yuma County ever tell you that your  
25 property was not within the Far West Water & Sewer service

1 area for sewer?

2 A. No.

3 Q. Now, you had questions yesterday from Mr. Black  
4 and today about Mr. Kaveney's representations to you that  
5 Far West Water & Sewer had capacity to serve your  
6 subdivision with sewer.

7 Did you rely only upon Mr. Kaveney's oral  
8 statement that the utility had sewer capacity?

9 A. Not only on his oral statement. I relied on --  
10 ultimately I relied on the document that he said he would  
11 offer and he ultimately executed it.

12 Q. And did you believe he had authority to execute  
13 that capacity assurance letter on behalf of Far West Water  
14 & Sewer?

15 A. Yes.

16 Q. Do you know how to complete or fill out a sewer  
17 capacity assurance letter or form?

18 A. No. Today I do, but at that point in time, no.

19 Q. But with respect to calculating capacity, is that  
20 something that you know how to do today?

21 A. Not specifically, no.

22 Q. Okay. Did you -- at the time would you have had  
23 access to any information regarding what the committed  
24 capacity or actual capacity of the Palm Shadows wastewater  
25 treatment plant was?

1 A. No.

2 Q. Did you rely upon Mr. Kaveney to have access to  
3 that information in preparing the form?

4 A. Yes.

5 MR. CROCKETT: Your Honor, I would like to  
6 introduce an exhibit at this point.

7 Q. (BY MR. CROCKETT) Mr. Householder, I handed you  
8 a document that has been marked as Exhibit A-45.

9 Does this document appear to be the responses of  
10 Far West Water & Sewer Company to Spartan's first set of  
11 data requests in this docket?

12 A. Yes.

13 Q. Have you seen this document before?

14 A. Yes.

15 Q. If you would, turn to tab H in that document.

16 A. Okay.

17 Q. And tab H is identified as -- well, it's  
18 responsive to Spartan data request 1.5 O, and it's a  
19 listing or it's the inclusion of a number of main  
20 extension agreements.

21 Now, let me go back just so the record is  
22 complete and look at the request itself. The data request  
23 1.5 O to Far West Water & Sewer asks that the utility  
24 provide a copy of all main extension agreements for water  
25 service signed by Far West Water & Sewer during the years

1 2004, 2005, and 2006.

2 And this tab H is a listing of main extension  
3 agreements and then copies of main extension agreements  
4 that were signed by Far West Water & Sewer during that  
5 2004 through 2006 time period.

6 Is that your understanding?

7 A. Yes.

8 Q. And would you take a look at the -- you know,  
9 thumb through some of those main extensions -- water main  
10 extension agreements that were included behind tab H and  
11 let me know when you have done that.

12 A. Okay.

13 Q. Do those water main extension agreements look  
14 like the agreement that you executed for Sierra Ridge  
15 Unit 1?

16 A. Yes.

17 Q. You testified, did you not, that you sat with  
18 Mr. Kaveney in his office and the two of you went through  
19 and prepared and ultimately signed a water main extension  
20 agreement for Sierra Ridge Unit 1; is that correct?

21 A. Yes.

22 Q. And it is your testimony, again, that what you  
23 signed and what was prepared by Mr. Kaveney looked  
24 substantially similar to these main extension agreements  
25 that are attached to the data request?

1           A.     Yes.

2           Q.     Now, if you would flip back to tab I -- and tab I  
3 is a response to Spartan data request 1.5 P, which asks  
4 Far West Water & Sewer to provide a copy of all collection  
5 main extension agreements for sewer service signed by Far  
6 West Water & Sewer during the years 2004, 2005, and 2006;  
7 is that correct?

8           A.     Yes.

9           Q.     And there is a table of contents for this that  
10 lists a number of main extension agreements for sewer; is  
11 that correct?

12          A.     Yes.

13          Q.     Again, just thumb through several of those sewer  
14 main extension agreements and let me know when you have  
15 done that.

16          A.     Okay.

17          Q.     Do those sewer main extension agreements look  
18 substantially similar to the agreement that you executed  
19 with Mr. Kaveney in January or February of 2005 for Sierra  
20 Ridge Unit 1?

21          A.     Yes.

22          Q.     So these forms are familiar to you? You have  
23 seen this before?

24          A.     Yes.

25                 MR. CROCKETT: Your Honor, at this point I would

1 move the admission of Exhibit A-45, which is the responses  
2 of Far West to Spartan's first set of data request. I  
3 will be using this exhibit later today with Mr. Capestro  
4 on cross-examination as well.

5 ALJ MARTIN: Mr. Black?

6 MR. BLACK: No objection, Your Honor.

7 ALJ MARTIN: All right. It's admitted.

8 (Exhibit A-45 was admitted into evidence.)

9 Q. (BY MR. CROCKETT) Now, Mr. Householder,  
10 Mr. Black also asked you some questions about the water  
11 service agreement and sewer service agreement that were  
12 executed for Sierra Ridge Unit 1.

13 Do you recall that?

14 A. Yes.

15 Q. And I'm going to look in your direct testimony at  
16 what is attached as Exhibit 10. Would you find that and  
17 let me know when you get there?

18 A. Is that my prefiled direct testimony?

19 Q. Correct.

20 ALJ MARTIN: Is it 10, Mr. Crockett?

21 Q. (BY MR. CROCKETT) Yes, Exhibit 10 to your  
22 prefiled direct testimony.

23 A. Okay.

24 Q. And I don't recall specifically if this is the  
25 document that you looked at with Mr. Black, but I'm not



1 sure it matters.

2 He asked you a question about whether or not at  
3 the time this agreement was signed you had an  
4 unconditional agreement with Far West Water & Sewer.

5 Do you recall that question?

6 A. I do.

7 Q. As you look at this document, do you know what  
8 the words conditional agreement mean in the context of  
9 this document?

10 A. Legally I may not know, but I commonsense know.

11 Q. Okay. Well, is Sierra Ridge a party to this  
12 agreement?

13 A. In the fact that it's written on here by the  
14 utility company, yes.

15 Q. Okay. But did Sierra Ridge -- did Spartan sign  
16 this document?

17 A. No.

18 Q. And in terms -- if the words unconditional  
19 agreement have specific legal meaning, do you know what  
20 legal meaning those words have?

21 A. No.

22 Q. You could make a guess at a common acceptance  
23 meaning of those words.

24 Is that your testimony?

25 A. Yes.

1 Q But in terms of any legal significance, you don't  
2 know whether those words have specific legal significance?

3 A No.

4 Q Now, earlier this morning Mr. Black asked you if  
5 going with sewer service from Far West Water & Sewer  
6 Company saved Spartan money on its Sierra Ridge  
7 subdivision.

8 Do you recall that?

9 A Yes.

10 Q If you would turning your direct prefiled  
11 testimony to page 25, I would like to look for a moment at  
12 the question and answer that begins on line 4.

13 You have testified, have you not, that Spartan  
14 has stopped constructing and selling homes in Sierra Ridge  
15 Unit 1?

16 A Yes.

17 Q What is the reason that you have stopped  
18 constructing and selling homes in Sierra Ridge Unit 1?

19 A There is no sewer capacity.

20 Q Is there any other reason besides that reason  
21 that you stopped selling homes?

22 A No.

23 Q In other words, had Far West Water & Sewer been  
24 able to adequately provide sewer service to you, you would  
25 still be selling homes in Sierra Ridge Unit 1 today?

1           A.     Yes.

2           Q.     Do you believe that you would have sold out the  
3 lots in Sierra Ridge Unit 1 by this point in time?

4           A.     Oh, quite a bit earlier than this point in time,  
5 sure.

6           Q.     And in your testimony here you talk about some of  
7 the costs associated with the stoppage and your ability to  
8 sell homes.

9                     Would you just expand upon this a little bit? Or  
10 I guess, what are some the costs that you have incurred as  
11 a result of your inability to sell homes in Sierra Ridge  
12 Unit 1?

13          A.     The first cost that comes to mind is based on Far  
14 West's -- I don't want to say promise -- but based on  
15 their statements that the sewer treatment facility would  
16 be back online within a few months and then, you know,  
17 specifically they said the fall of 2006. I continued to  
18 pay roughly \$9998 a month for my sales models to stay in  
19 place. Up until a certain time in fall of 2006 it was  
20 determined that they weren't going to get online as I  
21 testified yesterday. And that was right around a  
22 six-month time frame, maybe seven. So you can do the math  
23 there, that is 60- or \$70,000.

24                     The cost of the property taxes on the vacant lots  
25 right now -- and I'm not even including at the back

1 10 acres, but just property taxes on the vacant 51 lots as  
2 we speak today is just right at \$20,000 a year.

3 I had to cancel a number of sales contracts.

4 I have dust control that I have to perform at the  
5 subdivision, and this has been going on since we shut  
6 down.

7 I have expenses involved with just not having  
8 activity out there. There is upkeep on the property, you  
9 know, maintenance that had homeowners been in place they  
10 would have kind of been in that scenario. So I'm out  
11 there sweeping curbs and keeping the subdivision in good  
12 order.

13 And I have had to have a company to go out  
14 several times in the last several years and pull  
15 tumbleweeds off of lots because it's unsightly. Every  
16 time they go out there it's \$3,000. It's twice a year.

17 So those are some of the things that come to mind  
18 right now.

19 Q. Do you have interest expense on the property at  
20 this point?

21 A. Not right now.

22 Q. Okay. You mentioned also in your testimony  
23 yesterday that you paid fees to APS because you failed to  
24 hit a minimum target.

25 A. Yeah, I forgot about that. That was almost

1 \$42,000. And I'm going to forfeit the balance of what I  
2 would have gotten back from Southwest Gas, which I think  
3 we are looking at about \$21,000.

4 Q. How many employees did Spartan have at the time  
5 you were building homes in 2005?

6 A. Just between 25 and 30.

7 Q. How many employees do you have today?

8 A. Zero.

9 Q. So did you have to let all of those people go?

10 A. Yes. And now that we are on the subject of  
11 employees, it just brings up something else.

12 There were several thousand dollars in equipment  
13 that, you know, when you purchase new, you know that you  
14 are eventually going to get rid of down the line. So you  
15 will not be able to get your money out of them. But you  
16 would expect to use the equipment for a certain amount of  
17 time to make sure that it all pencils out to be able to  
18 use the equipment.

19 Well, I spent 25- or \$30,000 on a service truck  
20 for the subdivision just a few months before this shutdown  
21 occurred. So, you know, rather than having the truck sit  
22 idle for years and years and years, I had to sell it. So  
23 I took a hit on that, you know.

24 And, you know, I don't mind taking a hit on a  
25 vehicle if I am going to keep it for 5 or 10 years and

1 sell it for a nominal cost, but when you purchase a  
2 vehicle and then you sell it for half of what you  
3 purchased it for within, you know, a year and a half or  
4 two years after you purchased it, that is to me a loss.

5 Q. And also do you have lost profits on the sale of  
6 the homes that obviously you weren't able to sell because  
7 of the shutdown?

8 A. Yes.

9 Q. And you have indicated in your testimony that all  
10 of these financial losses exceed \$750,000 and approach  
11 \$1 million.

12 Is that your testimony today?

13 A. Yes.

14 Q. If you could go back in a time machine and if you  
15 could somehow unwind the commitment from Far West Water &  
16 Sewer to provide sewer service for the Sierra Ridge  
17 development and proceed ahead with septic systems,  
18 financially would you have been better off?

19 A. Absolutely.

20 MR. CROCKETT: Your Honor, that is all I have.  
21 Thank you.

22 ALJ MARTIN: Thank you, Mr. Crockett.

23 Mr. Black, from the additional information that  
24 was brought up, do you have any recross that you would  
25 like to have?

1 MR. BLACK: No, Your Honor.

2 ALJ MARTIN: Thank you. I have one thing.

3

4

FURTHER EXAMINATION

5

6 Q (BY ALJ MARTIN) As we have gone around in the  
7 questioning about your ability to do septic, your  
8 testimony is your ability to use septic when Far West made  
9 the representation that they had capacity available, you  
10 are talking about some state rule or regulation or such?  
11 Is there a reference in any of these documents to that  
12 specific rule?

13 A There is not.

14 Q And you don't know what that rule or regulation  
15 or, in fact, whose is it? Is it an ADEQ regulation? I  
16 mean, I don't know if you know or not, but do you know?

17 A I understand that it's an ADEQ regulation.

18 Q Okay. But we don't have anything here telling us  
19 what that might be?

20 MR. CROCKETT: Your Honor, if I could jump in  
21 here.

22 I don't believe there is anything in the record  
23 as far as what that rule is. I don't know if Your Honor  
24 has thought about closing arguments versus briefing.

25 I was going to propose that we do closing briefs

1 in this case, and we would be happy to provide the  
2 statutory citations to the rule that we have talked about  
3 in our briefing.

4 ALJ MARTIN: Yes, I was planning on requiring  
5 briefs in this matter, and if you could provide that, that  
6 would be quite helpful.

7 Then I have nothing further.

8 Anything else, gentleman, for Mr. Householder?

9 MR. CROCKETT: I think that wraps it up.

10 ALJ MARTIN: Okay. Very well. Mr. Householder,  
11 thank you very much.

12 THE WITNESS: Thank you.

13 ALJ MARTIN: And, Mr. Crockett, I believe you  
14 will be calling Ms. Wallace as your next witness.

15 MR. CROCKETT: That's right, Your Honor. Would  
16 it be possible to take a five-minute break?

17 ALJ MARTIN: We will take a 10-minute break right  
18 now.

19 Mr. Van Cleve, are you there?

20 MR. VAN CLEVE: I am.

21 ALJ MARTIN: When we come back. If you could  
22 have Ms. Wallace ready to go with you there.

23 MR. VAN CLEVE: She's here.

24 MS. WALLACE: Hi.

25 ALJ MARTIN: All right. We will go off the



1 record and come back by that clock at about 25 after,  
2 which is about five minutes faster, so about 20 after.  
3 Thanks.

4 (Whereupon, a recess was taken from 10:10 a.m.  
5 until 10:24 a.m.)

6 ALJ MARTIN: Back on the record.

7 And, Mr. Crockett, if you are ready, please call  
8 your next witness.

9 MR. CROCKETT: Thank you, Your Honor. Spartan  
10 calls Vicki Wallace.

11 ALJ MARTIN: All right. Ms. Wallace, if you  
12 could please stand and be sworn.

13 MS. WALLACE: Yes, ma'am.

14

15 VICKI WALLACE,  
16 called as a witness herein, appearing on behalf of Staff,  
17 having been first duly sworn by the Certified Court  
18 Reporter, was examined and testified as follows:

19 ALJ MARTIN: Since we are telephonic, if you  
20 would speak slowly and --

21 THE WITNESS: I will point out that I have a bad  
22 cold. If I'm not speaking up, then let me know.

23 ALJ MARTIN: Okay. Thank you. Hope you feel  
24 better.

25 Mr. Crockett.

## 1 DIRECT EXAMINATION

2

3 Q. (BY MR. CROCKETT) Good morning, Ms. Wallace.

4 A. Good morning.

5 Q. First of all, let me thank you for hanging in  
6 there on this case and sitting through now two days of  
7 full testimony before we get to this part of this.

8 A. That is my job, sir.

9 Q. Ms. Wallace, would you please state your name and  
10 business address for the record.11 A. Vicki Wallace, and I'm at 1200 West Washington,  
12 Phoenix, Arizona 85007.13 Q. And by whom are you employed and in what  
14 capacity?15 A. I'm employed by the Utilities Division of the  
16 Arizona Corporation Commission as an executive consultant.17 Q. And as an executive consultant, what are your  
18 primary responsibilities at the Commission?19 A. My duties include but are not limited to  
20 processing requests for new certification of service  
21 territories, extensions of service territories, and sales  
22 and transfers of territories for water and electric  
23 companies. I also process main line extensions for water  
24 companies.

25 Q. How long have you worked at the Commission?

1 A. Approximately seven years.

2 Q. And of that period of time, were you an executive  
3 consultant that entire period?

4 A. No, sir.

5 Q. What did you start -- briefly describe for me  
6 your prior titles at the Commission.

7 A. When I was first hired, I was chief of consumer  
8 services and of compliance. And then because of some  
9 shortfalls and that sort of thing, they started to assign  
10 me cases. I was chief of compliance and special projects.  
11 And now they just want me solely assigned to cases, so I'm  
12 an executive consultant.

13 Q. And you indicated as part of your  
14 responsibilities you look at water main extension  
15 agreements?

16 A. Yes, sir.

17 Q. And describe -- give me a little bit more detail  
18 regarding that responsibility.

19 Do you review or have you reviewed water main  
20 extensions that are submitted to the Commission's  
21 Utilities Division for approval?

22 A. Yes. There are basically two stages of that  
23 review. And the first stage is what I review, and it's  
24 just the requirements that are listed in the rules to make  
25 sure the agreement contains all of the information that is

1 the minimum information that is required.

2 And then the second part of the review is my  
3 engineering, where they determine the capacity and the  
4 reasonableness of the cost.

5 Q. And can you approximate for me the number of main  
6 extension agreements for water service that you may have  
7 looked at?

8 A. Oh, in what period of time, Mr. Crockett?

9 Q. Well, I mean, is it a large number or a small  
10 number?

11 A. It varies monthly. We have had an influx lately.  
12 I would say within a two-month period I received up to 45,  
13 but usually it's a lower amount than that.

14 Q. That falls within the category of a large number  
15 in my book.

16 Do you look at sewer collection main extension  
17 agreements?

18 A. No. Under the rules Staff is not required to  
19 review or approve sewer main extension agreements.

20 Q. Do you have, Ms. Wallace, an understanding of the  
21 reason why the Commission requires utility companies to  
22 enter into main extension agreements when developers will  
23 be either paying for or constructing utility  
24 infrastructure?

25 MR. VAN CLEVE: Your Honor, this is

1 Wes Van Cleve. A clarification on that, is this related  
2 to water main extension agreements or sewer or both?

3 MR. CROCKETT: Mr. Van Cleve, it actually was a  
4 broader question pertaining to both. I will focus in. I  
5 understand that Ms. Wallace doesn't review sewer main  
6 extension agreements, so I'm going to be zeroing in really  
7 on the water main agreements today but wanted to just get  
8 a -- to ask if she has a general understanding of the  
9 reason why the Commission requires that main extensions be  
10 memorialized in written main extension agreement.

11 MR. VAN CLEVE: I guess I object. Looking at the  
12 motion that you had filed in this case requesting that  
13 Staff provide a witness for this hearing, the scope of the  
14 testimony it said in your motion was regarding operation,  
15 applicability of the AAC R-14-2-406(M), and I believe that  
16 question goes beyond that testimony.

17 MR. CROCKETT: And I would respond, Your Honor,  
18 that in a procedural conference I believe we discussed  
19 that Ms. Wallace's testimony would be potentially broader  
20 than just that rule 406(M), and it was my recollection  
21 that Your Honor had agreed that Ms. Wallace could be  
22 available to answer questions that go beyond the specific  
23 rule that was cited in the motion.

24 ALJ MARTIN: I am looking right now at 406(M),  
25 and I believe after reviewing that I believe actually that

1 Mr. Crockett's question is reasonable within that narrow  
2 scope.

3 So I will permit the question.

4 THE WITNESS: Okay. Mr. Crockett, can I just  
5 summarize what I understand your question to be?

6 Your question is, do I know the reason that Staff  
7 would need to approve off on water main line extensions?

8 Q. (BY MR. CROCKETT) It actually is a little  
9 different than that, Ms. Wallace.

10 The question is: What -- do you know what the  
11 public policy reasons would be behind requiring that  
12 utility facility extensions be memorialized in a written  
13 agreement?

14 A. No, I'm sorry, I don't know that.

15 Q. Okay. Now, there is two or three things that we  
16 will be looking at today. One is an exhibit that I have  
17 had marked as Exhibit A-29, and that is a document that is  
18 captioned "Arizona Corporation Commission Utilities  
19 Division Main Extension Agreements." I obtained this from  
20 the Commission's web site.

21 Ms. Wallace, do you have a copy of Exhibit A-29?

22 A. Yes, sir, I do.

23 Q. Have you seen that document before?

24 A. Yes, I have.

25 Q. With respect to the first page of the document,

1 just maybe an inch into the body, it states, "Below are  
2 the minimum written agreement requirements."

3 Do you see that?

4 A. Yes.

5 Q. And is that taken from Rule R14-2-406?

6 A. Yes.

7 Q. And it identifies eight requirements; is that  
8 correct?

9 A. That's correct.

10 Q. Now, it states that -- item No. 5 indicates that  
11 the agreement must contain an itemized cost estimate to  
12 include materials, labor, and other costs as necessary.

13 My question for you is: Does a main extension  
14 agreement need to include the actual cost of constructing  
15 the facilities that are covered under the agreement?

16 A. If the facilities have not been constructed and  
17 an approval to construct has been issued by ADEQ, then  
18 only an itemized cost estimate from an engineering firm or  
19 whatever the contractor is would be required.

20 Now, you tell me if I'm going further than you  
21 want, but if the facilities have already been constructed,  
22 which is not really proper under the rules, then an  
23 approval of construction would be needed. And most main  
24 extension agreements have a paragraph in them that require  
25 the developer to submit the actual costs at the time that

1 infrastructure is handed over.

2 Q Okay. In the timing of a main extension  
3 agreement in the construction process, describe for me  
4 when the -- let's talk now about main extension -- about  
5 water main extension agreements, but describe for me at  
6 what point in time the water main extension agreement  
7 should be executed with respect to the actual construction  
8 of the water facilities.

9 A Well, the Commission rules require that it be  
10 executed prior to the commencement of the project.

11 Q Okay. So the main extension agreement would be  
12 signed by the utility and the applicant, and then it would  
13 be submitted to the Utilities Division Staff for approval;  
14 correct?

15 A Correct.

16 Q And then once it is approved, the construction of  
17 the water infrastructure would then go forward?

18 A Correct.

19 Q Now, you mentioned that sometimes that does not  
20 happen?

21 A There have been projects that have happened like  
22 that, yes.

23 Q But that is -- but if the utility infrastructure  
24 was constructed prior to the signing and approval of a  
25 water main extension agreement, that would be contrary to



1 the Commission's rules; is that correct?

2 A. Correct.

3 Q. If a utility had a large number of water main  
4 extension agreements that were signed after the utility  
5 infrastructure was constructed, would that be a concern to  
6 Commission Staff?

7 A. Repeat, please.

8 Q. If a utility company had a large number of water  
9 main extension agreements that were signed after the water  
10 infrastructure covered under those agreements had already  
11 been built, would that be a concern to the Commission  
12 Staff?

13 A. It would be a concern. It depends on -- it is on  
14 a case-by-case basis. I don't know if that answers your  
15 question, but, yeah, it would be a concern.

16 Q. Well, I think your testimony is that if the main  
17 extension agreement is signed after the water  
18 infrastructure is built, that would be contrary to the  
19 Commission's rules?

20 A. That's what it says.

21 Q. And I'm assuming that anytime a utility is  
22 operating contrary to Commission rules, that would be a  
23 concern to the Staff?

24 A. Yes.

25 Q. Now, in this document that is marked as Exhibit

1 A-29, in the bottom half of that page it identifies the  
2 things that have to be submitted to the Commission with  
3 the water line extension agreement.

4 Do you see that?

5 A. Yes.

6 Q. And the first one is an approval to construct  
7 from ADEQ, the appropriate County agency, or an exception  
8 letter stating that the company is exempt from the  
9 approval process?

10 A. Correct.

11 Q. With regard to that requirement, who is it that  
12 is responsible for getting the approval to construct?

13 A. The developer.

14 Q. Okay. And that is assuming that the developer is  
15 constructing the water infrastructure; is that right?

16 A. Correct.

17 Q. If the utility was constructing the water  
18 infrastructure, would it be the expectation that the  
19 utility would get the approval to construct?

20 A. Mr. Crockett, to be quite honest with you, I  
21 don't check that. I mean, I don't check who gets the  
22 approval to construct, so it's hard for me to answer that.

23 Q. Okay. Fair enough.

24 The second item is an engineering water use data  
25 sheet or an engineering design report, if applicable.

1           My first question to you is: Are you familiar  
2 with the engineering water use data sheet?

3           A.     I am.

4           Q.     Would you briefly describe what is contained on  
5 that document?

6           A.     It shows the number of -- I'm just going from  
7 memory here. I don't have anything in front of me -- it  
8 shows the number of gallons pumped by month, I believe. I  
9 don't remember what else. I'm sorry.

10          Q.     Okay. I'm kind of going from memory, too. I  
11 know it says the gallons pumped. I think may also include  
12 gallons sold, but I'm not 100 percent sure.

13          A.     I'm --

14                 ALJ MARTIN: Ms. Wallace, could you repeat that,  
15 please?

16                 THE WITNESS: I said I think that that is, but  
17 that is subject to check.

18          Q.     (BY MR. CROCKETT) Okay. And who prepares the  
19 water use data sheet?

20          A.     The utility company.

21          Q.     Would you agree that a developer would not have  
22 access to the information that would be needed to prepare  
23 a water use data sheet?

24          A.     Yes.

25          Q.     Now, it also says an engineering design report if

1 applicable.

2 Do you know when an engineering design report  
3 would be applicable?

4 A. I do not.

5 Q. Okay. Item No. 3 says that obviously the signed  
6 documents need -- the signed main extension agreements  
7 need to be submitted?

8 A. Yes.

9 Q. And then item No. 4 is if a variance is being  
10 requested that the reason for the variance needs to be  
11 stated; correct?

12 A. Correct.

13 Q. Okay. And so once you receive the main extension  
14 agreements -- or the water main extension agreements, the  
15 approval to construct, the engineering water use data  
16 sheet, what do you do with them?

17 A. I make sure -- like I said before, I make sure  
18 that all the information as required by the rules is in  
19 the MXA. If it's not, I will return it with a letter to  
20 the company. But if all of the criteria is met, then I  
21 will send it to engineering for technical review.

22 Q. And then what does engineering do with it?

23 A. Engineering determines storage and capacity  
24 issues and also reasonableness of the cost of the  
25 estimate.

1 Q And then does engineering report back to you or  
2 to the person that's reviewing the main extension  
3 agreement?

4 A They report back to me.

5 Q And then assuming that engineering signs off on  
6 the technical review, what is the next thing that happens?

7 A Then a letter goes out to the company, the  
8 utility company, approving the main line extension.

9 Q Who is responsible for submitting a main  
10 extension agreement to the Commission for approval?

11 A Utility company -- the water company.

12 Q Okay. What happens if a water company does not  
13 submit a main extension agreement for approval?

14 A Then it's not effective, and the rule that you  
15 specifically asked about would apply.

16 Q And we will go there right now. The rule I think  
17 that you are referring to is R-14-2-406(M)?

18 A Yes.

19 Q And, Ms. Wallace, if you don't mind, I will read  
20 that for the record.

21 A Okay.

22 Q It states, "All agreements under this rule shall  
23 be filed with and approved by the Utilities Division of  
24 the Commission. No agreement shall be approved unless  
25 accompanied by a certificate of approval to construct as

1 issued by the Arizona Department of Health Service," which  
2 I believe is now the Arizona Department of Environmental  
3 Quality.

4 A. Correct.

5 Q. "Where agreements for main extensions are not  
6 filed and approved by the utilities Division, the  
7 refundable advance should be immediately due and payable  
8 to the person making the advance."

9 A. Yes.

10 Q. Okay. In this case Spartan constructed the water  
11 infrastructure that is now being used by Far West Water &  
12 Sewer to serve the water customers within the subdivision?

13 A. Yes.

14 Q. So it's not a cash advance is what I'm saying.

15 A. Right.

16 Q. So does this -- I mean, the fact that it is not a  
17 cash advance, does that alter this statement in the rule  
18 that says that where agreements are not filed and approved  
19 by the Utilities Division, that the refundable advance  
20 shall be immediately due and payable to the person making  
21 the advance?

22 A. Does that alter -- what did you say? Does that  
23 alter?

24 Q. Yes, does that change?

25 A. No.

1       Q.     Okay.  So whether the developer provides cash to  
2     the utility to construct the infrastructure or whether the  
3     developer actually constructs the infrastructure and then  
4     the utility accepts that infrastructure, the amount of  
5     that advance is refundable where the developer does not  
6     get a main extension agreement for water approved?

7       A.     Correct, and let me explain that.

8             In the definition of refundable advances it says  
9     "funds."  It does refer to the word funds, but Staff is of  
10    the opinion that funds can be in the form of plant.

11            ALJ MARTIN:  Can or cannot, Ms. Wallace?

12            THE WITNESS:  Can be in the form of plant.  We  
13    made that prior determination before.

14            ALJ MARTIN:  Thank you.

15       Q.     (BY MR. CROCKETT)  Now, Ms. Wallace, I can't  
16     remember if I asked you this, but have you listened to the  
17     majority of this hearing so far?

18       A.     Yes.

19       Q.     And you understand that Far West Water & Sewer is  
20     making the argument that no water main extension agreement  
21     was signed in this case?

22       A.     Yes.

23       Q.     And you understand also that Far West Water &  
24     Sewer acknowledges that it is currently serving  
25     approximately 62 customers, water service in the Sierra

1 Ridge subdivision?

2 A. Yes.

3 Q. Now, if Far West Water & Sewer is correct that no  
4 main extension agreement for water was ever entered into  
5 between the parties, does Rule 406(M) come into play in  
6 your opinion?

7 MR. VAN CLEVE: Your Honor, I was going to  
8 object, but I think if he is just asking of your opinion  
9 of the applicability, then that is fine.

10 ALJ MARTIN: Yes. Ms. Wallace, solely in your  
11 opinion.

12 THE WITNESS: I'm sorry, Mr. Crockett, my mind is  
13 not all clear, so if you could repeat that.

14 Q. (BY MR. CROCKETT) You bet. You are probably on  
15 cold medication right now.

16 A. I am. Poor Mr. Van Cleve has to be in the same  
17 office with me.

18 Q. Okay. I guess -- let me give you a scenario  
19 here. And I'm going to assume -- and to make it very  
20 clear for the record this is an assumption that obviously  
21 we do not agree with -- but assume that Far West Water &  
22 Sewer is correct that there is not a water main extension  
23 agreement that was signed between Spartan and Far West in  
24 this case, and also -- I don't think you have to assume  
25 this because I think it's in evidence -- that Far West is



1 currently and has been serving a number of utility  
2 customers, as many as 62 or 63 in the subdivision, and I  
3 believe it's also in evidence that the water  
4 infrastructure has been constructed, that Far West Water &  
5 Sewer has issued a letter of acceptance that indicates  
6 that the water infrastructure was accepted, that the  
7 testing and certifications and things have been done and  
8 have been submitted.

9           So assuming all of that is true, does Rule 406(M)  
10 apply in that situation, in your opinion?

11       A.    To the extent that the utility company has  
12 accepted infrastructure to their plant and is serving  
13 water customers, yes, the rule would apply.

14       Q.    Even if the evidence in this case or even if the  
15 judge concluded that, in fact, no water main extension  
16 agreement was ever signed between Far West and Spartan?

17       A.    You know, I can't give an opinion on the  
18 agreement because I haven't reviewed it or I don't know of  
19 its existence or anything. I can only tell you Staff's  
20 opinion of the applicability of that rule.

21           It applies to all situations wherein the company  
22 has accepted infrastructure and is supplying water to  
23 customers.

24       Q.    Okay. Now, Ms. Wallace, under R14-2-406(C)(2),  
25 the rule states that each applicant shall be provided with

1 a copy of the written main extension agreement.

2 Do you see that rule?

3 A. R-406 what?

4 Q. (C) (2).

5 A. Yes.

6 Q. In your opinion, whose responsibility is it to  
7 provide an applicant for an extension of water service  
8 with a copy of the written main extension agreement?

9 A. It would be the utility company.

10 Q. And if a utility company failed to provide a copy  
11 of a written main extension agreement to an applicant for  
12 service, would that be a violation of this rule?

13 A. Yes.

14 Q. Under 14-2-406(D) and (E), the rule discusses  
15 refunds of advances in aid of construction.

16 Do you see that?

17 A. Correct.

18 Q. Where a utility company has accepted water  
19 infrastructure from a developer and is serving  
20 customers --

21 A. Yes.

22 Q. -- is that utility company obligated to make  
23 refunds to advances to the utility -- I mean to the  
24 developer?

25 MR. VAN CLEVE: And, Your Honor, this is

1 Wes Van Cleve. I guess this would be the same objection,  
2 that Ms. Wallace was called to testify regarding  
3 R-14-2-406(M) and its applicability and operation in this  
4 case, and this goes beyond that.

5 ALJ MARTIN: Mr. Crockett?

6 MR. CROCKETT: Well, Your Honor, my specific  
7 recollection of our procedural conference on this issue  
8 was that you had indicated that Ms. Wallace should be  
9 prepared to answer questions that go beyond 14-2-406(M).

10 MR. VAN CLEVE: And if I may, Your Honor, looking  
11 at your procedural order it specifically addresses just  
12 that rule.

13 ALJ MARTIN: Hang on.

14 Mr. Crockett, I had pulled out my procedure order  
15 earlier, but I want to take a look at the request for  
16 participation, so give me a moment, please.

17 Mr. Crockett, Mr. Van Cleve, looking at page 2 of  
18 the request for participation of Staff witness filed  
19 August 20, 2009 from Spartan Homes, the concluding  
20 paragraph states, "Thus Spartan Homes hereby requests that  
21 the ALJ issue a procedural order directing Staff to  
22 provide witness for a deposition at a convenient date and  
23 time or provide prefiled testimony regarding the operation  
24 and applicability of AAC R14-2-406(M) in this case."

25 Looking at the procedural order it mirrors that

1 language, operation and applicability; however, I think as  
2 I look at the word "operation," I do see how -- I do see  
3 how Mr. Crockett's question relates to the operation of  
4 it, because 406(M) talks about what happens if certain of  
5 the requirements of 406 are not met.

6 So I think I will allow the question and answer.

7 THE WITNESS: Okay. Now, here is my answer.  
8 Most agreements do have -- well, actually they don't get  
9 to engineering if they don't have the refund language.  
10 That is required in the rules. That has to be there.

11 But I go back to my original contention. To the  
12 extent that we did not receive or approve an MXA, then, in  
13 my opinion -- in my opinion, this would not apply because  
14 (M) would rule that all refundable advances are  
15 immediately due to the developer.

16 Q. (BY MR. CROCKETT) So if I understand your  
17 testimony, and I think I do, 14-2-406(D) and (E) don't  
18 really apply because 14-2-406(M) would require the utility  
19 to return the funds or the value of the infrastructure?

20 A. Correct.

21 Q. Ms. Wallace, are there any -- does the Commission  
22 permit oral main extension agreements?

23 A. Clarify, please.

24 Q. Well, looking at Rule 14-2-406(G) it states, "All  
25 agreements entered into under this rule shall be evidenced

1 by a written statement and signed by the company and the  
2 parties advancing the funds for advances in aid under this  
3 rule or the duly authorized agent of each."

4 A. Well, I think the rule kind of speaks for itself.

5 Q. That --

6 A. The rule requires written agreements.

7 Q. Okay. The rules require written agreements,  
8 understood.

9 Now, Ms. Wallace, turning to again 406(M), the  
10 last sentence says, "Where agreements for main extensions  
11 are not filed and approved by the Utilities Division, the  
12 refundable advance shall be immediately due and payable to  
13 the person making the advance."

14 Do you have an opinion regarding the time period  
15 that corresponds to immediately due and payable?

16 A. No. I have never been asked that question, and I  
17 haven't -- I haven't asked my director.

18 Q. Okay. Fair enough.

19 Bear with me just is a moment, Ms. Wallace.

20 A. Okay.

21 Q. Do you have a copy of the testimony of  
22 Andy Capestro in this case?

23 A. No. I didn't read any of the documentation in  
24 this case.

25 Q. I'm going to ask you a question about a statement

1 in Mr. Capestro's prefiled testimony.

2 MR. CROCKETT: Mr. Van Cleve, do you have a copy  
3 of that?

4 MR. VAN CLEVE: I was going to say, yeah, I do  
5 have a copy if you point me to the page.

6 MR. CROCKETT: Page 7, lines 19 to 21.

7 MR. VAN CLEVE: Starting with the absence of any  
8 agreement?

9 Q. (BY MR. CROCKETT) Yes. I'm going to back up on  
10 that page. And I'm going to look at the question that  
11 starts on line 2. It says:

12 "QUESTION: Has the onsite infrastructure at  
13 Sierra Ridge been accepted by the company?

14 "ANSWER: Yes. The onsite infrastructure was  
15 accepted by Mr. Kaveney in April 2005."

16 Now, I am then looking at the testimony beginning  
17 on line 19 that says, "Absence any agreement, the company  
18 could not have violated AAC R14-2-406(M), which requires  
19 all main extension agreements to be filed with the  
20 Utilities Division for approval.

21 Now, I believe that your testimony would  
22 contradict that statement, because I believe you testified  
23 that where utility infrastructure has been accepted by the  
24 utility. And it clearly has in this case as evidenced by  
25 Mr. Capestro's testimony on line 4 of page 7, then rule

1 406(M) would apply regardless of whether there is actually  
2 an agreement.

3 Is that correct?

4 MR. VAN CLEVE: And, Mr. Crockett, are you  
5 referring to again water main extension agreements or  
6 water and sewer main extension agreements?

7 MR. CROCKETT: Only to water main extension  
8 agreements.

9 THE WITNESS: It is Staff's opinion, as I  
10 indicated before, to the extent that a utility has  
11 accepted infrastructure and is serving water customers,  
12 that a rule would apply.

13 Q (BY MR. CROCKETT) Now, on page 8 of  
14 Mr. Capestro's testimony, at line 3, he states, "Arguably  
15 the company could be in violation of AAC R14-2-406(G)  
16 because it never entered into a water main extension  
17 agreement despite taking ownership of the onsite  
18 infrastructure constructed by Spartan."

19 If you accept that there was never a main  
20 extension agreement signed for water, would you agree with  
21 Mr. Capestro that the company could be or would be in  
22 violation of AAC R14-2-406(G)?

23 MR. BLACK: Objection. That calls for a legal  
24 conclusion.

25 ALJ MARTIN: I agree.

1 Q. (BY MR. CROCKETT) Bear with me again,  
2 Ms. Wallace.

3 Ms. Wallace, do you have an opinion as to what is  
4 the public policy that underlies Rule 406(M)?

5 A. I do not.

6 MR. CROCKETT: Your Honor, I had a few more  
7 questions on some areas that go beyond 406(M), but I get  
8 the read that we aren't going there today.

9 ALJ MARTIN: That would be correct. Documents,  
10 scope, and operation of 406, I think I allowed you to push  
11 it as far as I thought was reasonable under the order; you  
12 are going outside the scope of 406 and its operation.

13 MR. CROCKETT: Okay. Then that is all I have for  
14 Ms. Wallace.

15 And, Ms. Wallace, thank you very much for your  
16 testimony today.

17 ALJ MARTIN: Okay. Hang on a while Mr. Black  
18 figures out how to work his phone.

19 Okay. Mr. Black, do you have any questions?

20 MR. BLACK: Just one question. Thank you.

21

22 CROSS-EXAMINATION

23

24 Q. (BY MR. BLACK) Ms. Wallace?

25 A. Okay.



1       Q.     With respect to AAC R14-2-406(C)(2), the  
2     requirement that applicant should be provided with a copy  
3     of the written main extension agreement, you testified  
4     that that responsibility was the utility company's?

5       A.     It appears to be, yes.

6       Q.     Do you know whether the reference there to the  
7     written main extension agreement is an approved or  
8     unapproved written main extension agreement?

9       A.     It's not clear.

10      Q.     Do you have an opinion as to whether that applies  
11     to approved or unapproved or both?

12      A.     I can tell you that prior to this time there has  
13     been cases where Staff has determined -- and don't ask me  
14     to tell you which ones those are -- Staff has determined  
15     that the rule is applicable to providing a copy of  
16     whatever main extension agreement was executed.

17             MR. BLACK:   Thank you.   No further questions.

18             ALJ MARTIN:   Very well.

19             Mr. Crockett, do you have anything further?

20             MR. CROCKETT:   I do not, Your Honor.

21             ALJ MARTIN:   Okay.   Let me ask if this witness  
22     may be excused.

23             MR. CROCKETT:   Yes.

24             ALJ MARTIN:   Okay.

25             THE WITNESS:   Well, thank you.

1 ALJ MARTIN: I hope you feel better. Thank you  
2 so much for hanging in with us for a couple days.

3 THE WITNESS: No problem.

4 ALJ MARTIN: But it's been a bad couple days with  
5 your cold and the battery.

6 THE WITNESS: I have my battery fixed.

7 ALJ MARTIN: Get yourself well too. Thank you  
8 very much.

9 THE WITNESS: You're welcome.

10 ALJ MARTIN: Mr. Crockett, any other witnesses?

11 MR. CROCKETT: Your Honor, that is our direct  
12 case. We would reserve the right to recall either  
13 Mr. Householder or Mr. Galindo as a rebuttal witness if we  
14 need to after hearing from Mr. Capestro.

15 ALJ MARTIN: All right. Then you know what? I  
16 don't show that Exhibit A-29, the form of main extension  
17 agreement, was admitted.

18 Did you wish to have that admitted?

19 MR. CROCKETT: I do, Your Honor. I would move  
20 the admission of A-29 or ask that Your Honor take  
21 administrative notice.

22 ALJ MARTIN: Mr. Black, do you have any  
23 objection?

24 MR. BLACK: No objection, Your Honor.

25 ALJ MARTIN: We will just admit it.

1 (Exhibit A-29 was admitted into evidence.)

2 ALJ MARTIN: And if you could, Mr. Crockett,  
3 quickly pull your list of exhibits. I want to one more  
4 time confirm what I have as admitted exhibits. All right?  
5 And I'm not going name them; I will just go by number and  
6 hope we have the name right. Okay.

7 I have Exhibits A-1, 2, 3, 6, 22, 23, 24, 27 --

8 MR. CROCKETT: Let me stop you there.

9 ALJ MARTIN: I'm sorry, A-27A.

10 MR. CROCKETT: And I also have A-23A.

11 ALJ MARTIN: Yes. They are not -- they are  
12 numbered off to the side. That is why I am missing them.

13 Yes, I have A-23A and A-23 as well, A-27, and  
14 A27A.

15 MR. CROCKETT: I'm sorry. You also have A-24?

16 ALJ MARTIN: Yes. Yes, I'm sorry. Thank you.

17 Let's see, 29, A-36 and 36A, 37, 38, 39, 40, 41,  
18 42, 42A, 44, 45, 47 through 54.

19 MR. CROCKETT: That is what I have, Your Honor.

20 ALJ MARTIN: Okay. Great.

21 Anything different, Mr. Black?

22 MR. BLACK: I don't have that list, but may we  
23 take -- my client just requested a five-minute break  
24 before he begins his testimony.

25 ALJ MARTIN: Yes. We will be back at 20 after.

1 MR. VAN CLEVE: And, Your Honor, I assume that I  
2 am excused from further listening.

3 ALJ MARTIN: I'm sorry. Yes, your witness has  
4 left the building, so you may leave as well.

5 MR. VAN CLEVE: Thank you, Your Honor.

6 ALJ MARTIN: Thank you, Mr. Van Cleve.

7 (Whereupon, a recess was taken from 11:10 a.m.  
8 until 11:20 a.m.)

9 ALJ MARTIN: Mr. Black, were you ready?

10 MR. BLACK: Yes, Your Honor.

11 ALJ MARTIN: Okay. Great.

12 MR. BLACK: I would like to call Mr. Capestro to  
13 the stand, Andy Capestro.

14 ALJ MARTIN: Okay.

15

16 ANDREW J. CAPESTRO,  
17 called as a witness herein, appearing on behalf of the  
18 Respondent, having been first duly sworn by the certified  
19 court reporter, was examined and testified as follows:

20 ALJ MARTIN: Mr. Capestro, make sure that the  
21 green light is on.

22

23 DIRECT EXAMINATION

24

25 Q. (BY MR. BLACK) Good morning.

1           Please state your name and business address for  
2 the record.

3       A.     Andrew J. Capestro. 12486 South Foothills  
4 Boulevard, Yuma, Arizona.

5       Q.     And who are you employed by?

6       A.     I am a self-employed attorney, but I also work  
7 for Far West Water & Sewer.

8       Q.     And on whose behalf are you testifying today?

9       A.     Far West Water & Sewer.

10      Q.     And have you ever testified before the Arizona  
11 Corporation Commission?

12      A.     Yes, I have.

13      Q.     Mr. Capestro, I believe what is marked in front  
14 of you as Exhibit R-2 is your direct testimony.

15      A.     I see R-1 for my testimony.

16      Q.     I'm sorry. R-1.

17           And as you sit here today, is this substantially  
18 the testimony that you filed on November 20, 2009?

19      A.     It is.

20      Q.     And do you have any revisions to that testimony  
21 at this time?

22      A.     I would like to clarify on page 3, line 3 where  
23 it says "a misrepresentation to local, County, and State  
24 officials" by a former employee of Far West Water & Sewer,  
25 I would add those words after the word officials.

1 ALJ MARTIN: Could you say that again,  
2 Mr. Capestro, what the addition would be?

3 THE WITNESS: Line 3 after "misrepresentations to  
4 local and County officials," I would add the words, "by a  
5 former employee of Far West Water & Sewer."

6 ALJ MARTIN: Thank you.

7 Q. (BY MR. BLACK) And do you adopt -- with that  
8 revision do you adopt that testimony as you sit here  
9 today?

10 A. Yes, I do.

11 Q. Thank you.

12 Mr. Capestro, I would like to go over two  
13 exhibits that Mr. Crockett provided. The first exhibit is  
14 Exhibit A-27A. This is the "Rancho Rialto Activities,  
15 Projects, and Developments."

16 Have you reviewed that document?

17 A. I have that document.

18 Q. And does this document show certain lots within  
19 Rancho Rialto that were hooked up after ADEQ placed a  
20 moratorium on the company for this particular wastewater  
21 treatment plant?

22 A. It shows finals on modular homes that were hooked  
23 up.

24 Q. Modular homes.

25 A. Whether or not there was a hookup there before or

1 not does not show on this document.

2 Q Can you briefly describe your understanding of  
3 what this particular exhibit represents?

4 A Well, I could tell you what I understand about  
5 Rancho Rialto.

6 Q Please, go ahead.

7 A Rancho Rialto is a gated community that was  
8 originally started, I believe, in 2001. That community  
9 was mostly an RV park with spaces for modular homes. The  
10 RV park and the space for modular homes was and always has  
11 been on a commercial water line.

12 Far West Water does not go inside the community  
13 to check how much water each party is using. We charge  
14 based upon the commercial meter that is on there, and it's  
15 for the entire park.

16 For the RV lots we charge pursuant to the tariff  
17 of -- I believe it's \$5 per space that is in there.

18 When Rancho Rialto was built, it was built with  
19 water and sewer to all the RV lots as well as any lot that  
20 was to go to the modular homes.

21 Far West has no control over any modular home  
22 that is in there. The water is already going to it, and  
23 the sewer was already in there in 2001.

24 We are notified normally by an owner once he  
25 hooks up that he is on to the sewer, but that doesn't

1 happen all the time. We are required to go into the park  
2 and see if there are empty lots and compare that with the  
3 lots that we have on file. The County does not ask us  
4 anything about permission because there is already water  
5 and sewer there.

6 Q So when the County issued building permits to add  
7 these lots, did it require any type of authorization from  
8 Far West Water & Sewer?

9 A No, it doesn't require it. And we asked the  
10 County whether or not any provision could be made, and  
11 there was none. For every other lot that is outside of an  
12 RV parking lot, the County requires a letter from us  
13 stating that we have sufficient capacity, either water or  
14 sewer or both.

15 Q So it's your testimony today that Far West Water  
16 & Sewer had no control over the addition of these lots?

17 A Absolutely none, and it caused a problem because  
18 additional homes were being moved there -- they are  
19 modulars -- and hooked up without any type of control by  
20 us.

21 Q Thank you.

22 I would also like to turn your attention to the  
23 exhibit provided to you today, Exhibit A-29, by  
24 Mr. Crockett.

25 A Yes.



1 Q This is a -- this came from the Arizona  
2 Corporation Commission web site?

3 A Correct.

4 Q I would like you to turn to page 3 of what looks  
5 to be a form main extension agreement.

6 A Correct.

7 Q Under Section 2A what does that require?

8 A This one requires a refundable advance in aid of  
9 construction for the total amount that be paid to the  
10 company; however, it also requires that the main line  
11 extension agreement describe and itemize the cost of  
12 materials used for the water extension. And it also  
13 requires for a labor description and cost of labor. And  
14 it also requires at D that we have exactly the linear feet  
15 of the various sizes of pipe that are used for  
16 distribution.

17 This is a form that I'm familiar with, and this  
18 is what we have been trying to get into our main line  
19 extension agreements. And that -- and I -- well, I will  
20 stop there. There is no question.

21 Q And isn't the purpose of these sections to ensure  
22 that there are -- that what is refunded are actual costs?

23 A Well, it's for two purposes. One, it's for the  
24 purpose of making sure the actual cost is refunded and  
25 that those actual costs are reasonable. It is also

1 required that the utility place in its books how many  
2 linear feet it has of each size pipe and report that  
3 annually to the ACC.

4 Q And has Mr. Householder provided you with actual  
5 costs that comply with the provision of these terms?

6 A No. He provided an engineer's estimate before  
7 building, and he provided a lump sum of what Mr. Noll had  
8 charged him. But it does not show exactly what types and  
9 lengths of pipe are used, the thickness of the pipe.

10 We have asked for the receipts for what Mr. Noll  
11 purchased to put in the ground and exactly the lengths of  
12 what he put in, the size and depth of manholes and the  
13 like. A simple bill itself does not provide for us to put  
14 in our books and the requirement to show exactly what you  
15 put in.

16 Q So as we sit here today, if there was a main  
17 extension agreement with a refunding provision as required  
18 by the rule, would be able to refund money to  
19 Mr. Householder?

20 A No, I would have to have it showing what is put  
21 in and what is reasonable.

22 I have rejected other agreements when the  
23 estimate is widely off from one developer or another.  
24 Sometimes they are two and three times the amount. I'm  
25 very familiar with Mr. Noll. I am very familiar with his

1 work, and I want to know what he has put in.

2 Q Those are the only two questions I had on those  
3 particular exhibits.

4 My final question to you, and it may involve a  
5 series of questions -- I would like to cut to the chase  
6 here, Mr. Capestro.

7 Why is it that you feel that as a company you  
8 cannot provide the relief that Mr. Householder is seeking  
9 in this complaint?

10 A Well, it seems an issue of exactly where we are  
11 going, if the developer should carry the burden of the  
12 cost of capacity, the cost of the new plant, it should not  
13 all go on the ratepayer. And if we ignore the fact that  
14 the developers in the past have paid for their fair share  
15 of, especially sewer, that it will put a much larger  
16 amount into the rate base and increase the burden on the  
17 actual consumer.

18 Plus the fact that we have just gone through an  
19 attempt to get interim rates, and the company cannot  
20 finance it by itself. It needs the help from the  
21 developers.

22 Q So how would you characterize the state of the  
23 company's financial situation at this time?

24 A Dire.

25 Q And isn't it true that the company has been

1 criticized by its customer for allowing developers to hook  
2 into their system without paying their fair share?

3 A. That is the perception of the consumers as to  
4 whether or not they paid their fair share. And we have  
5 been severely criticized because they believe we have not  
6 been trying to get funds from the developers themselves.

7 Q. Mr. Capestro, I believe in your testimony and  
8 your prefiled direct testimony you make a comment that  
9 Mr. Householder and Spartan's complaint is "the least of  
10 your concerns."

11 You don't mean that to mean that you are not  
12 concerned with the issues before the Commission; is that  
13 correct?

14 A. Oh, no, but I think it's of a bigger concern,  
15 especially to people like Mr. Householder and Spartan  
16 Homes and other homes, that we actually get these plants  
17 completed, get them online, and get service to them for  
18 the sewer. That is of the most importance to me.

19 Q. Do you have anything to add to your testimony  
20 today?

21 A. That is a question as to what happens after  
22 Mr. Crockett asks me questions.

23 Q. Okay. I will wait until that time, and I may  
24 certainly reserve some time for redirect.

25 MR. BLACK: With that, I would like to introduce

1 R-1 and the attached exhibit.

2 ALJ MARTIN: Mr. Crockett, an objection?

3 MR. CROCKETT: No, Your Honor.

4 ALJ MARTIN: All right. Thank you. So admitted.

5 (Exhibit R-1 was admitted into evidence.)

6 MR. BLACK: And now I would like to make

7 Mr. Capestro available for cross-examination.

8 ALJ MARTIN: Thank you.

9 Mr. Crockett?

10 MR. CROCKETT: Thank you, Your Honor.

11

12 CROSS-EXAMINATION

13

14 Q. (BY MR. CROCKETT) Mr. Capestro, good morning.

15 A. Good morning, Mr. Crockett.

16 Q. Who are the shareholders of Far West Water &  
17 Sewer?

18 A. Paula Capestro and Sandy Braden.

19 Q. Are there any others?

20 A. No.

21 Q. Are you a shareholder?

22 A. I'm not.

23 Q. Is Paula Capestro your wife?

24 A. She was this morning. I'm sorry. Yes, she is.

25 Q. And is Sandra Braden your sister-in-law?

1 A. She is.

2 Q. Does that mean that Sandra Braden and  
3 Paula Capestro are sisters?

4 A. They are.

5 Q. In what year did Ms. Capestro and Ms. Braden  
6 acquire their ownership interest in Far West Water &  
7 Sewer?

8 A. They acquired their ownership interest in stages.  
9 There was a spinoff of Far West Water & Sewer as a  
10 separate corporation from H & S Developers pursuant to a  
11 directive of the ACC in 1998. At that time the  
12 shareholders of H & S Developers acquired the same  
13 interest in Far West Water as they had in H & S  
14 Developers.

15 Paula Capestro and Sandy Braden, their interest  
16 totaled 31 percent between them, 15 and a half percent  
17 each.

18 ALJ MARTIN: Could you please spell Ms. Braden's  
19 name for me?

20 THE WITNESS: B-r-a-d-e-n.

21 ALJ MARTIN: Thank you.

22 THE WITNESS: Upon the death of Henry Schechert,  
23 out of the estate both of them received, pursuant to his  
24 trust, an additional interest in Far West Water & Sewer,  
25 which gave them approximately a 50 percent interest

1 between the two of them.

2 They purchased the remaining interest from their  
3 mother after that date. I can't give you the exact date.

4 Q. (BY MR. CROCKETT) Was it a few years ago or was  
5 it very recently?

6 A. It's in the 2005, 2006 period.

7 Q. Who is the board was directors of Far West Water  
8 & Sewer?

9 A. Paula Capestro, Sandy Braden, and their mother,  
10 Dorothy Schechert, Henry Schechert's widow, is their  
11 chairman of the board.

12 ALJ MARTIN: I'm sorry. What is the last name?

13 THE WITNESS: S-c-h-e-c-h-e-r-t.

14 ALJ MARTIN: Thank you.

15 Q. (BY MR. CROCKETT) So if I have the family  
16 history right, Henry Schechert is or was the father of  
17 Paula Capestro and Sandy Braden?

18 A. That is correct.

19 Q. And his widow, Dorothy Schechert, is still a  
20 director on the board?

21 A. She is 91 years old.

22 Q. Is she active in board dealings?

23 A. She is active when we have a board meeting. She  
24 is not active in the day-to-day activities of the company.

25 Q. Do you know when each of these ladies were

1 elected to the board of directors?

2 A. I believe that they were elected to the board of  
3 directors shortly after the death of Henry Schechert.

4 Q. When did that occur?

5 A. September 6 of 1998. At that time the chairman  
6 of the board of Brent Weidman, W-e-i-d-m-a-n.

7 ALJ MARTIN: Thank you.

8 THE WITNESS: May I add, while Mr. Weidman was  
9 there they had very little activity with the company.  
10 Mr. Weidman handled all the affairs of the company.

11 Q. (BY MR. CROCKETT) So the three --  
12 Paula Capestro, Sandy Braden, and Dorothy Schechert -- had  
13 little to do with the company while Mr. Weidman was  
14 running the company?

15 A. Right. Before Mr. Schechert's death,  
16 Mr. Schechert advised them that he had hired an  
17 outstanding man to run the company and just handle it, and  
18 they followed their dad's wishes.

19 Q. And when did Mr. Weidman leave the company?

20 A. I believe it was in 2003.

21 Q. So is it fair to say that beginning sometime in  
22 approximately 2003 that Paula Capestro, Sandy Braden, and  
23 to a lesser extent Dorothy Schechert stepped up and became  
24 much more involved in the management of the company?

25 A. No. At that time he was replaced by



1 Dusty Thomas, and they had a fairly inactive role in the  
2 company until early 2006.

3 Q And that is -- is that when Mr. Thomas left or  
4 did he leave in the end of 2006?

5 A He left, if I recall, in October of 2006.

6 Q So these three ladies, it is your testimony that  
7 they had little to do with the day-to-day operation of the  
8 company until sometime in 2006?

9 A They believed at the time the best thing to do  
10 was to hand it over to the experts.

11 Q Who are the current officers of Far West Water &  
12 Sewer?

13 A There are two officers. Paula Capestro is the  
14 president, and Sandy Braden is the chief executive  
15 officer.

16 Q Does the company have a treasurer?

17 A Paula Capestro.

18 Q Or a secretary?

19 A Sandy Braden.

20 Q Is Ms. Schechert an officer?

21 A She is not.

22 Q Currently is Ms. Capestro involved in the  
23 day-to-day operation of the company?

24 A She is. She is the president. She is there most  
25 every day. She also has her general commercial

1 contractor's license assigned to Far West.

2 Q Is Ms. Braden involved in the day-to-day  
3 operations of the utility?

4 A She is, but to a lesser extent.

5 Q Is there a division of responsibilities between  
6 the two of them with regard to day-to-day operations?

7 A Paula Capestro is mostly responsible to be the  
8 general contractor for the plants being installed, the  
9 main lines being finished, the new pipe being up, getting  
10 the bids for the new water plant that has to be built, and  
11 the day-to-day operation of trying to find the financing.  
12 She is very active for that.

13 Sandy Braden is more visible, out in the field  
14 making sure there no problems.

15 Q Does Ms. Braden have any state certifications?

16 A She is a licensed real estate broker -- I take  
17 that back. She is a licensed real estate broker for the  
18 state of Arizona and other states.

19 Q Does she have any certification to operate  
20 utility companies?

21 A No. We have a number of employees that are  
22 certified.

23 Q Does Ms. Capestro have any certification to  
24 operate utility companies?

25 A No, she does not.

1 Q. And again, you probably already answered this,  
2 but Ms. Schechert is not involved in the day-to-day  
3 operation?

4 A. She is not.

5 May I add that in the county of Yuma there are  
6 four people that have Grade IV certifications of both  
7 water and sewer. We employ three of the four. The County  
8 has one. Grade IV is the highest grade you can get in the  
9 state of Arizona.

10 Q. Are you an employee of Far West Water & Sewer?

11 A. No, I'm not.

12 Q. Are you -- then is it safe to say that you are  
13 not general counsel for Far West Water & Sewer?

14 A. I'm general counsel for Far West Water & Sewer,  
15 but I do that as an independent attorney. I'm not on the  
16 employee records.

17 Q. You are neither an officer nor a director of Far  
18 West Water & Sewer?

19 A. I am not.

20 Q. Have you been engaged to represent Far West Water  
21 & Sewer in this complaint proceeding?

22 A. I was admitted for this proceeding pro hoc vice  
23 to be a part of this.

24 Q. Are you authorized to testify in this case on  
25 behalf of Far West Water & Sewer?

1 A. I am.

2 Q. And how were you authorized?

3 A. By oral agreement.

4 Q. And who is the oral agreement with?

5 A. Paula Capestro and Sandy Braden.

6 Q. This is though board resolution?

7 A. No.

8 Q. No written authorization of any kind?

9 A. No.

10 Q. Mr. Capestro, do you know why Far West Water &  
11 Sewer --

12 ALJ MARTIN: Mr. Crockett, may I interrupt?

13 MR. CROCKETT: Yes.

14 ALJ MARTIN: Let's go off the record.

15 (Discussion off the record.)

16 ALJ MARTIN: While we were off the record we were  
17 discussing the issue of Mr. Capestro's authority to  
18 testify on behalf of Far West as he is not an officer or  
19 director and not an employee of Far West.

20 And, I'm sorry. Mr. Black, your response to that  
21 was that it's not been brought up before in any  
22 proceedings?

23 MR. BLACK: Mr. Capestro has testified on behalf  
24 of Far West in several proceedings before this Commission.  
25 There are current proceedings, and his testimony has been

1 accepted by the Commission on behalf of Far West  
2 previously.

3 ALJ MARTIN: All right. Thank you.

4 Again, I appreciate that. I understand that that  
5 is the case, but for my own purposes though, here is what  
6 I would like to do. If it's not agreeable, then I think  
7 we are to stop.

8 Mr. Capestro, Mr. Black, would it be possible to  
9 hold a board meeting and get a resolution issued  
10 authorizing Mr. Capestro to testify on behalf of the  
11 company? That doesn't have to be done today, but I  
12 will -- with your assurance that something will be done in  
13 the next couple days and filed in docket control under  
14 this docket, I will permit Mr. Capestro to testify, if  
15 that is acceptable to Mr. Crockett.

16 MR. CROCKETT: Your Honor, it is acceptable to  
17 me. I would add that as a company witness though, that  
18 there is -- I would expect that there is no  
19 attorney/client privilege associated because he is not  
20 acting as attorney for the company in this proceeding. He  
21 is acting as a witness.

22 So when I go through questions, I don't want to  
23 hear Mr. Capestro responding that he can't answer that  
24 because it's subject to attorney/client privilege.

25 ALJ MARTIN: And I don't -- I guess I will let

1 Mr. Capestro answer that, but I don't think that will be  
2 an issue based on any testimony he provided.

3 THE WITNESS: I don't know what he is going to be  
4 asking as advice I would have been giving to any of the  
5 board.

6 ALJ MARTIN: We will cross that when we get  
7 there.

8 THE WITNESS: I don't know what it will be.

9 ALJ MARTIN: Again, we will cross that stream  
10 when we get there.

11 MR. CROCKETT: With respect to your comment about  
12 a board resolution that would be docketed, you know, after  
13 the proceeding, that would be acceptable to us. We, of  
14 course, would reserve the right to look at the board  
15 resolution.

16 But Your Honor is right. I mean, the concerns I  
17 had with that line of questioning was, you know, whether,  
18 in fact, Mr. Capestro is authorized to testify today. I  
19 understand he is the spouse of the president of the  
20 company, but --

21 ALJ MARTIN: And I do appreciate your bringing up  
22 the line of questioning. I do admit some culpability to  
23 this issue. We had admitted Mr. Capestro pro hoc vice  
24 when it was initially thought he would be handling this.  
25 I think to -- I was under the assumption of that, but you

1 are correct, that if his testimony here today is to his  
2 role for Far West, I'm not seeing any sort of authority  
3 there, and that is partially my fault. I should have  
4 addressed that sooner. I apologize.

5 Mr. Black.

6 MR. BLACK: No reason to apologize, Your Honor.

7 As far as the question whether the company would  
8 be able to provide the board resolution, I will defer that  
9 question to Mr. Capestro to answer directly.

10 THE WITNESS: I believe that would be easy enough  
11 to do.

12 ALJ MARTIN: All right. And you know what? It's  
13 almost 1:00. Let's -- since -- is there a line that you  
14 would like to finish before you break for lunch or should  
15 we stop there?

16 MR. CROCKETT: That is fine.

17 ALJ MARTIN: Let's go ahead and break for lunch.  
18 We will come back here about 1:00 or thereabouts.

19 MR. BLACK: Thank you.

20 ALJ MARTIN: Off the record.

21 (Whereupon, a recess was taken from 11:49 a.m.  
22 until 1:01 p.m.)

23 ALJ MARTIN: Let's go ahead and go back on the  
24 record. And when we left, I believe, Mr. Crockett, you  
25 were conducting your cross-examination.

1 MR. CROCKETT: Thank you, Your Honor.

2 Q (BY MR. CROCKETT) Mr. Capestro, do you know why  
3 Far West Water & Sewer chose not to send an officer or an  
4 employee of the company to testify in this proceeding?

5 A The -- what was happening around this case and  
6 the testimony, I have a better knowledge than the officers  
7 of the company.

8 Q So is it your testimony that among the current  
9 officers and employees of Far West Water & Sewer Company  
10 that you have the most knowledge regarding the facts in  
11 this case?

12 A I believe so. I'm the one that is most  
13 intimately involved in it.

14 Q Would you say you have more knowledge regarding  
15 this case than Ms. Capestro?

16 A Depends on which aspects of the case you are  
17 talking about.

18 Q What about Ms. Braden?

19 A I believe Ms. Capestro and I would have the most  
20 knowledge of this more than Ms. Braden.

21 Q Is there any employee of Far West Water & Sewer  
22 currently that has more knowledge regarding this case than  
23 you or your wife?

24 A Certain aspects of it. As you could see from the  
25 responses to your discovery, some of it was done by other



1 people in the company, such as Roxanne Fiddes. Obviously  
2 the people working for the company back in 2004, 2005, and  
3 early 2006 would have more direct knowledge than I would,  
4 but they are no longer there.

5 Q And none of those people are no longer at the  
6 company?

7 A Mr. Thomas is no longer there. Mr. Kaveney is no  
8 longer there. We have had quite a shakeup in the company.

9 Q What about Sarah Phillips?

10 A She is no longer.

11 Q When did Roxanne Fiddes join the company?

12 A I believe she has been there since she was 21,  
13 and she is 28 now.

14 Q She would have been around at the time -- in the  
15 2004, 2005 time frame?

16 A She was a customer service employee at that time  
17 before she became elevated to be officer manager in 2007,  
18 I believe.

19 Q At that time in 2004, 2005, would she have had  
20 any dealings with Mr. Householder and his development,  
21 Sierra Ridge?

22 A The only interaction she had with Mr. Householder  
23 during that time would be times when he came into the  
24 office and came to the customer service desk.

25 Q When you do legal work for Far West Water &

1 Sewer, who do you report to?

2 A. I report to Paula Capestro and Sandy Braden.

3 Q. Did --

4 A. I also give Dorothy Schechert updates about what  
5 is happening because she is interested in this. At  
6 91 years old she has a very active mind. I wish mine was  
7 as active.

8 Q. Did Far West Water & Sewer consider calling its  
9 former general superintendent, Mark Kaveney, as a witness  
10 in this case?

11 A. Individually I think that was a question for  
12 counsel as to who should be called.

13 Q. And who is counsel?

14 A. Mr. Black.

15 Q. Did Mr. Black make the decision as to whether or  
16 not Mr. Kaveney would be called as a witness to testify in  
17 this case?

18 A. I know he asked me to testify.

19 Q. Did you discuss calling Mr. Kaveney as a witness  
20 with Ms. Capestro?

21 A. No, I did not.

22 Q. So is it safe to say that you did not make a  
23 recommendation to Far West Water & Sewer regarding calling  
24 Mr. Kaveney to testify in this case?

25 A. I don't think it was considered.

1 Q. Would you agree that Mr. Kaveney probably knows  
2 the most about this case of anyone at the company  
3 currently?

4 A. No.

5 Q. Who knows more about this case than Mr. Kaveney?

6 A. I think there are a lot of issues that happened  
7 in 2006 concerning the line extension agreements and the  
8 plant that is being put in and the expansion and what is  
9 necessary, that Mr. Kaveney and Mr. Thomas basically were  
10 not involved in that.

11 Q. Okay. But during 2004 and 2005, which is the  
12 focus point of this proceeding -- those are the years when  
13 service was being considered and agreements were being  
14 signed -- would you agree with me that Mr. Kaveney would  
15 have more information on that than anyone currently at the  
16 company?

17 A. I agree that he would have more knowledge of what  
18 happened in 2004 and '05. I wouldn't agree that  
19 agreements were being signed at that time, if you are  
20 talking about line extension agreements, since we cannot  
21 find anything in our files. And I don't believe any of  
22 those were made because they are not on any of the  
23 computers.

24 Q. Do you know how to reach Mr. Kaveney?

25 A. I had a phone number for him and an e-mail, et

1 cetera, for him. I don't know if that phone number is  
2 current or not.

3 Q When was the last time you had contact with  
4 Mr. Kaveney?

5 A The last time I saw him was, I believe, his  
6 deposition. The last time I heard that he was in the area  
7 is several months ago, but I didn't see him at that time.

8 Q Now, did you arrange with Mr. Kaveney to attend  
9 his deposition?

10 A Yes, I did.

11 Q And how did you contact him to make that  
12 arrangement?

13 A I received a phone number from an employee of Far  
14 West Water & Sewer.

15 Q Have you had any discussion in person or by phone  
16 with Mr. Kaveney since the date of his deposition?

17 A Not to my recollection. I did have an e-mail  
18 from him offering some services for Far West Water, but  
19 other than that, no.

20 Q When did you receive that e-mail?

21 A I don't remember. He said he was working for a  
22 company that now manages various water and sewer  
23 companies.

24 Q His deposition was November 21, 2008; is that  
25 correct?

1           A.     Seems right.

2           Q.     So the e-mail from him would have come since  
3 November 21, 2008?

4           A.     Correct.

5           Q.     Have you hired Mr. Kaveney to do any work for Far  
6 West Water & Sewer?

7           A.     No, I have not.

8           Q.     Do you know whether anyone else at Far West Water  
9 & Sewer has had contact with Mr. Kaveney since  
10 November 21, 2008?

11          A.     I don't know directly. I know he has friends at  
12 the company still.

13          Q.     Mr. Capestro, in your direct testimony at page 1,  
14 lines 11 and 13, you state that you were lead counsel for  
15 the company in the criminal complaint brought by the State  
16 of Arizona against the company.

17                   What was the basis of the complaint brought  
18 against Far West Water & Sewer by the State of Arizona?

19          A.     2001, October 21st?

20                   MR. BLACK: Objection, Your Honor. Relevance.

21                   ALJ MARTIN: Sustained unless you can -- I'm  
22 sorry, Mr. Crockett.

23                   MR. CROCKETT: May I be heard?

24                   ALJ MARTIN: Yes.

25                   MR. CROCKETT: Mr. Capestro has testified in this

1 case, and the bulk of the case is that Mr. Kaveney was  
2 acting outside the scope of his duties as an employee of  
3 the company. And I want to talk about some different  
4 instances involving the company and ask Mr. Capestro  
5 whether or not the employees involved in those -- whether  
6 it is his position that employees in those cases were also  
7 acting outside the scope of their employment.

8 I think it's relevant, Your Honor, because I  
9 believe that we can show in this case that there is a  
10 pattern by Far West Water Company of what I would describe  
11 as throwing employees under the bus when the company makes  
12 mistakes and not owning up to those mistakes. And the  
13 testimony in the case with respect to Mr. Kaveney is  
14 essentially that. And I want to talk with Mr. Weidman and  
15 what happened with regard to this criminal complaint.

16 And I guess it also goes to whether or not the  
17 company follows rules. I'm making the argument in this  
18 case or we are making the argument that this company does  
19 not follow rules, and this is further evidence that the  
20 company does not follow rules.

21 ALJ MARTIN: Mr. Black.

22 MR. BLACK: Your Honor, I think that we have  
23 established that in the case that is before you, rules  
24 were not followed. So I don't see the relevance of trying  
25 to establish that rules were not followed in different

1 instances.

2           Also, if there is any kind of -- I mean, that is  
3 a criminal case that has been tried. There has been  
4 orders -- consent orders. There has been a judgment. So  
5 if you want to introduce that as evidence separately,  
6 again, I would object to that as well.

7           ALJ MARTIN: Okay. I have listened to  
8 Mr. Crockett's argument. I don't think he is trying to  
9 re prosecute this criminal case, and I do see where you are  
10 going with it.

11           Mr. Black's statement, though, Mr. Crockett,  
12 about there has been some testimony so far about the  
13 company not following rules, do you have a sense as to --  
14 I don't want to be duplicative. Do you know what I mean?  
15 I really don't want to go in depth into some of this.

16           So what I will do is I will allow the  
17 questioning, but I will reserve the right to jump in and  
18 say we need to cut this off here.

19           MR. CROCKETT: I understand that, Your Honor, and  
20 I will be fairly brief here. Thank you.

21           ALJ MARTIN: Okay.

22           Q. (BY MR. CROCKETT) Mr. Capestro, I have handed  
23 you a copy of a document that is entitled "Company  
24 President Convicted on Employee On-the-Job Deaths,"  
25 published July 2006, Volume 3, No. 2. And it's from the

1 Labor's Health & Safety Fund in North America. This is a  
2 document that I found when I did a web search on Far West  
3 Water & Sewer.

4 MR. CROCKETT: I have just a few questions about  
5 this document, and then I will move on, Your Honor.

6 THE WITNESS: Before you ask me questions about  
7 the president, I was not counsel for the president in his  
8 criminal defense. I was -- I did not attend the trial.

9 Q. (BY MR. CROCKETT) Okay. But you indicate in  
10 your testimony that you were lead -- you indicated you  
11 were lead counsel for the company in the criminal  
12 complaint brought by the State of Arizona -- oh, against  
13 the company?

14 A. That is a separate trial.

15 Q. Two trials?

16 A. Yeah. They were not held at the same time.

17 Q. I did not know that. Thank you for that  
18 clarification.

19 In the first paragraph of Exhibit A-46, the last  
20 sentence says, "Arizona jury found" -- it says that an  
21 Arizona jury found the president of Far West Water & Sewer  
22 guilty of negligent homicide for deaths that occurred in  
23 2001; is that correct?

24 A. It did find him guilty. Mr. Kimmerer, as counsel  
25 on that -- and the matter is under appeal -- but argued



1 before the Appellate Court and is presently pending.

2 Q The third paragraph states that the jury found  
3 the former president of the company, Brent Weidman, guilty  
4 of two counts of negligent homicide and two counts of  
5 endangerment in the deaths of James Gamble and  
6 Gary Lanser; is that correct?

7 A I have never seen this document before, but they  
8 did find Mr. Weidman guilty of two deaths. The company  
9 was not found guilty of two deaths.

10 Q Then the following sentence says, "Previously,  
11 the company had been convicted of five felony charges in  
12 the same incident and fined \$1.77 million for its failure  
13 to adhere to OSHA's confined space standard. As  
14 president, Weidman was ultimately responsible for the  
15 company's safety practices."

16 Do you dispute anything that I just read you in  
17 those two sentences?

18 A The company was convicted of five related  
19 charges. I don't think they were fined on all five of  
20 them because they were related to the same incident.

21 That matter is also under appeal and pending  
22 before the Appellate Court.

23 Q Paragraph 4, the last sentence states, "Far West  
24 did not train" -- well, let me back up.

25 This, I believe, is the assertion in the

1 complaint case against the company that you were involved  
2 in, so I will ask you --

3 A. Correct.

4 Q. That last sentence says, "Far West did not train  
5 its workers, did not follow required rescue procedures,  
6 and did not test the air in the tank on the day of the  
7 incident."

8 Do you agree that that is what the court found in  
9 that case?

10 A. I don't know what the court found. Because we  
11 asked for a specific verdict and the court -- the judge  
12 would not allow it. He wanted something more. What the  
13 basis was for why they believed that the company was  
14 guilty was not shown. I know what they said in argument.  
15 I don't believe that they found that, and as I said, it's  
16 under appeal.

17 They are going back to the original criminal  
18 complaint saying these things. We think that we showed  
19 enough training, enough experience, enough classes, even  
20 tutors to take care of these people. And whether or not  
21 the air was tested on that particular day or not, we had  
22 conflicting testimony.

23 So what the court found, we have a jury verdict  
24 saying they are guilty, but they did not go into  
25 specifics.

1 Q Okay. I understand that.

2 Now, this article says that "As president,  
3 Weidman was ultimately responsible for the company's  
4 safety practices."

5 Do you agree with that statement?

6 A Once again, I find it -- I don't know quite  
7 frankly whether the president should be ultimately  
8 responsible for the safety practices or the people he  
9 delegated it to.

10 ALJ MARTIN: Mr. Crockett, Mr. Capestro, I'm  
11 sorry to interrupt. I will let you finish this answer,  
12 but, Mr. Crockett, I am uncomfortable with, as you know  
13 with the line of questioning in the first place. Second  
14 place, it's coming from an article that's not -- first of  
15 all not apparently any type of legal statement. These are  
16 apparently, it's my guess, written by some layperson. So  
17 statements in here -- I mean, I understand you're asking  
18 opinions, but I'm real uncomfortable with this line of  
19 questioning.

20 So, Mr. Capestro, if you remember what you are  
21 saying, finish. And, Mr. Crockett, if you have one  
22 question more, you would be permitted, but after this I  
23 think we need it cut this off.

24 MR. CROCKETT: I understand, Your Honor.

25 THE WITNESS: What I was going to say is I

1 understand that Mr. Weidman put the burden on his  
2 shoulders and said in court that ultimately the  
3 responsibility was his. I don't think that was a finding  
4 of the jury. I think that was something that Mr. Weidman  
5 had said before in an interview with representatives of  
6 the Attorney General's Office. I don't think he testified  
7 at trial, but, as I said, I was not there.

8 MR. CROCKETT: And this is the last question,  
9 Your Honor, in connection with this matter.

10 Q. (BY MR. CROCKETT) In connection with this  
11 matter, is it your belief that Mr. Weidman was acting  
12 outside the scope of his duties for Far West in any way?

13 ALJ MARTIN: Let's take a moment.

14 (Discussion off the record.)

15 MR. CROCKETT: Could I have the question read  
16 back?

17 (Requested portion of the record read.)

18 THE WITNESS: Are you talking about findings of  
19 the court or something else?

20 Q. (BY MR. CROCKETT) I'm talking about your opinion  
21 that in connection with the deaths and the injury that  
22 arose out of this event, is it your position that  
23 Mr. Weidman was in any way acting outside the scope of his  
24 duties as an employee of Far West Water & Sewer?

25 A. I don't think that he is responsible for their

1 deaths, but we did argue that there was no finding in the  
2 court as to whether or not certain people were acting  
3 within the course and scope of their employment.

4           There is also a question of when he gave a  
5 statement to the attorney general's investigators of  
6 whether or not he was authorized to do so and whether or  
7 not that was within the scope.

8           So there are various questions there versus what  
9 did he do on the day that these people died or the days  
10 leading up to them.

11           MR. CROCKETT: Your Honor, there is one follow-up  
12 question, and then I will move on.

13           Q. (BY MR. CROCKETT) That is this: Did Far West  
14 Water & Sewer in the criminal complaint case against the  
15 company make the argument that Mr. Weidman was in any way  
16 acting outside the scope of his duties as an employee in  
17 connection with the events that gave rise to the  
18 complaint?

19           A. It's been quite a while. I don't remember doing  
20 that. I remember making the argument that they had never  
21 made a finding that it was within the scope and course of  
22 his duties. And there was an argument concerning whether  
23 or not his statement could come in against the company  
24 because that is a question as to whether or not a person  
25 can freely give a statement that implicates the company

1 and they cannot cross-examine this person. It's just a  
2 question of the Fifth and the Sixth Amendments.

3 Q. Was Mr. Kaveney involved in any way in the events  
4 that led up to these deaths?

5 A. No.

6 Q. This predated his employment with the company?

7 A. It did.

8 We still take the position that it was an  
9 unfortunate accident.

10 ALJ MARTIN: And may I ask one question, what is  
11 the status of the appeal?

12 THE WITNESS: The appeal was argued in June, and  
13 I go online every day to see if there will be something  
14 happening the next day or so. I haven't seen a thing.

15 ALJ MARTIN: Thank you.

16 MR. CROCKETT: Your Honor, also given what you  
17 have said regarding the previous exhibit we looked at,  
18 Exhibit 46, I will not move that into evidence. I just  
19 wanted to ask questions on that.

20 ALJ MARTIN: Thank you. I will have that  
21 withdrawn.

22 Q. (BY MR. CROCKETT) Mr. Kaveney, I have handed you  
23 a document --

24 A. Excuse me.

25 Q. I'm sorry, Mr. Capestro. Both of you starting

1 with a ca sound.

2 A. One is a C and one is a K.

3 Q. I know one is a C and one is a K, but in my  
4 outline I have switched the names multiple times. I think  
5 I have caught all the typos, but if I do that again,  
6 please forgive me.

7 A. One is Italian and one is definitely not.

8 Q. Is Capestro Italian?

9 A. Very much so, and proud of it.

10 Q. I have handed you an exhibit that has been marked  
11 as Exhibit A-32. It is a consent order in Docket P-10506  
12 in the matter of Far West Water & Sewer.

13 Have you seen this consent order before?

14 A. Yes, I have.

15 Q. Does Far West Water & Sewer acknowledge the  
16 validity of the violations alleged in the consent order?

17 A. You know, if you take a look and under recitals,  
18 paragraph 3, it says, "By entering into this consent order  
19 Far West does not admit to any civil or criminal liability  
20 or waive any right."

21 I would be unable to answer that question.

22 Q. Well, I guess my question is, the allegations  
23 that are contained in this consent order by ADEQ, do you  
24 dispute those? Does the company dispute them?

25 A. There are certain allegations in there that are

1 subject to a separate complaint by ADEQ. By admitting  
2 those allegations at the present time ties our hands in  
3 that litigation. So I would be unable to flatly say yes  
4 or no.

5 Obviously if you are in a case you have certain  
6 defenses, and this has a lot of stuff that ADEQ had found.  
7 A lot of it we had responded to in writing. But we got --  
8 we went into a consent order so that we could move forward  
9 with doing the new plants. There was -- but that is about  
10 as far as I can go.

11 Q. So if I can summarize your answer, you are saying  
12 you neither admit nor deny the allegations in the consent  
13 order at the present time?

14 A. I think that is where I have to be because of the  
15 provision that says there is no admission of criminal or  
16 civil liability.

17 Q. Who was running Far West Water & Sewer at the  
18 time of the violations that are alleged in this consent  
19 order?

20 A. The -- there is only way of answering that, and  
21 that is to give you some background.

22 Q. Well, do we need background or is there -- I  
23 mean, can you tell me who was -- it seems to me like  
24 it's a -- in this time frame you ought to be able to say  
25 who was running the company.



1 A. Okay.

2 ALJ MARTIN: I will allow him to expand on the  
3 background.

4 THE WITNESS: Okay. During the 2005 time plant  
5 started to fail to denitrify the effluent like they are  
6 supposed to, and Palm Shadows failed to percolate.

7 Far West, at the recommendation of the director  
8 at the time, Dusty Thomas, hired an engineer by the name  
9 of Mr. Moore to try to get all of the plants up to snuff  
10 because we had had inspections from ADEQ saying that there  
11 were certain problems.

12 It turned out that this project was higher --  
13 harder to solve than Mr. Moore was able to do. He had met  
14 with ADEQ a number of times. In the end of January 2006  
15 for the first time Paula Capestro, Sandra Braden, and  
16 Dorothy Schechert met face-to-face with ADEQ to determine  
17 if there were any problems with any of the plants.

18 At that time they were told there was a problem  
19 with the Del Oro plant. Following that meeting and at the  
20 recommendations of Mr. Moore and ADEQ, Far West, through  
21 Paula Capestro, hired a Dr. David Stencil from the  
22 University of Washington. He is an expert in the  
23 environment and an expert in effluent and wastewater  
24 treatment.

25 Mr. -- Dr. Stencil said that basically the plants

1 cannot denitrify because the strength of the effluent was  
2 so much that you would need to have underground tanks that  
3 were four times the size of these. Instead of 10 foot in  
4 diameter they would have to be 40 feet.

5 MR. CROCKETT: Your Honor, can I interrupt here?  
6 I asked the question, who was running the company at the  
7 time of the violation in the consent order, and it seems  
8 we are getting very far afield.

9 THE WITNESS: I'm very close to the end of it.

10 ALJ MARTIN: Although I want to address this now.

11 As Mr. Householder was testifying, some of  
12 Mr. Black's question Mr. Householder was allowed to expand  
13 and expound, and so I'm going to allow Mr. Capestro the  
14 same ability. All right? So let me say that now.

15 You mentioned a couple names now.

16 THE WITNESS: Dr. David S-t-e-n-c-i-l, I  
17 believe -- it could be s-e-i -- University of Washington.  
18 And I talked about Dusty Thomas.

19 ALJ MARTIN: Okay. Sorry.

20 THE WITNESS: Okay. Following his investigation  
21 we had a meeting with representatives of ADEQ in March of  
22 2006. In March of 2006 there was a complete failure of  
23 the system at Del Oro. ADEQ and representatives of Far  
24 West, which included Paula Capestro, Sandy Braden,  
25 Dusty Thomas, and the like, met with ADEQ and the County

1 to say what we were going to do with Del Oro.

2 As a result we sat there with Henry Darwin from  
3 ADEQ, who was the attorney at the time, and we entered the  
4 first consent order.

5 Under that consent order the only thing we were  
6 required to do was put a temporary plant over at the Del  
7 Oro plant that is north of the freeway, which we were able  
8 to do by June 1st of 2006, so that we were able to handle  
9 all of the effluent at Del Oro and be able to hook more  
10 people up.

11 During that meeting we also talked about the fact  
12 that if you have one plant failing, maybe we should go  
13 around and look at all the others, which we did with ADEQ.  
14 And we were under the assumption at that time, which  
15 Mr. Talbert and others at ADEQ said, if this temporary  
16 plant works, maybe you will be able to use the temporary  
17 plant at other places.

18 So basically we tried to enter into a consent  
19 order to be able to get temporary plants and the matter  
20 moving. Eventually ADEQ had a new person in the doggone  
21 thing, and the consent that came out was nothing like the  
22 ones that had been proposed by other representatives of  
23 ADEQ and their engineering Staff. And we -- and  
24 Ms. Capestro was told she had to sign it that day if she  
25 wanted to sign their permits, and that is what they were.

1           Who was in charge at that time? We were just  
2 coming into the thing at that time and trying to rectify a  
3 problem that had occurred before. And that would have  
4 been starting with Brent Weidman and going through  
5 Dusty Thomas. And whose fault is it, I don't know. They  
6 just didn't work. I could blame the engineers.

7       Q.     (BY MR. CROCKETT) When you say "They didn't  
8 work," what are you referring to?

9       A.     The Palm Shadows plant did not perc like the  
10 engineering tests said they would. It was supposed to  
11 perc to 12 feet a day. It does not perc at all because  
12 it's on clay, and it does not properly denitrify.

13           The Section 14 plant works beautifully except it  
14 doesn't take care of the nitrates.

15           Seasons works normally, but it does have some  
16 nitrification problems.

17           The Del Oro plant works beautifully. And Marwood  
18 plant works beautifully.

19       Q.     How many wastewater treatment plants does Far  
20 West currently operate?

21       A.     Seven.

22       Q.     And how many wastewater treatment plants were  
23 implicated in this consent order?

24       A.     Six.

25       Q.     Which one was not?

1       A.     Marwood. Marwood was the only one that was put  
2 in when we changed from septic tanks to sewers in 1994.

3       Q.     When did you first begin having problems with  
4 percolation at the Palm Shadows treatment plant?

5       A.     I don't know the answer to that. I was --

6       Q.     Was it prior to the time you became involved in  
7 the day-to-day operations of the utility?

8       A.     Yes.

9       Q.     Mr. Capestro, if I could turn your attention in  
10 Exhibit A-32 to page 12, line 17.

11      A.     Yes.

12      Q.     Have you read this section H on the Palm Shadows  
13 wastewater treatment plant before?

14      A.     Yes, I have.

15      Q.     And there are certain -- is this a compliance  
16 schedule that the utility is required to meet?

17      A.     Yes, it is.

18      Q.     Would you tell me -- and is the Palm Shadows --  
19 would you agree with me -- let me start over.

20             Would you agree that the Palm Shadows wastewater  
21 treatment plant is the plant that receives the wastewater  
22 that comes from the Sierra Ridge subdivision?

23      A.     It is.

24      Q.     With regard to the first three compliance items  
25 listed on page 1, would you briefly tell me what the

1 company's status is with regard to those?

2 A. On number one it was submitted to ADEQ, a request  
3 for minor modification; two, that we would bring Palm  
4 Shadows into compliance with its total APP. That was the  
5 biggest problem we had.

6 Q. Was that done --

7 A. We submitted technology, but we had tested it and  
8 we told ADEQ that that technology would not work.

9 Q. Did you meet the time frames that are contained  
10 in that paragraph under section H?

11 A. We met the time frames with having the attempts  
12 of the engineer thought would work and he found that it  
13 didn't work.

14 Q. What about with regard to No. 2?

15 A. You know --

16 Q. That requires that --

17 A. Once again, I am in the position of litigating  
18 with ADEQ, and I'm close to a settlement on that matter.  
19 I'm feeling very uncomfortable about saying whether or not  
20 we made these time limits because I have various problems  
21 with the timeline that ADEQ took to be able to settle and  
22 approve permits for Section 14 where this effluent was  
23 going to.

24 And this document --

25 Q. Mr. Capestro, if I could interrupt here. I'm

1 asking a specific factual question.

2 The compliance schedule states that within 200  
3 calendar days of the effective date of the consent order,  
4 which I believe is October 31, 2006, that Far West is to  
5 file or submit to ADEQ a closure plan for the Palm Shadows  
6 wastewater treatment plant.

7 Did you file a closure plan for the Palm Shadows  
8 wastewater treatment plant within 200 calendar days of the  
9 effective date of the this consent order?

10 A. We have a closure plan that has been filed, and I  
11 believe it was filed on time. Those are taken care of  
12 Coriolis, C-o-r-i-l-i-s, Engineering. And the chief  
13 engineer is Gary Lee, and they are out of Kansas City,  
14 Missouri.

15 Q. With respect to No. 3, No. 3 states within 90  
16 calendar days of the receipt of ADEQ's written approval of  
17 the closure of plant, Far West shall complete all closure  
18 requires associated with the Palm Shadows wastewater  
19 treatment plant.

20 Have you received ADEQ written approval for the  
21 closure plan for the Palm Shadows wastewater treatment  
22 plant?

23 A. Can I have a moment to -- can I have a moment to  
24 review the document? I'm looking for the force main  
25 language.

1 Q. You bet.

2 ALJ MARTIN: Let us know whenever you are ready.

3 THE WITNESS: I'm ready to go ahead.

4 Q. (BY MR. CROCKETT) Okay. Do you need the  
5 question read back?

6 A. No. H ties into G.

7 Q. Okay.

8 A. G3.

9 Q. Okay. And you have complied with G3 in a timely  
10 manner?

11 A. Yes, not only did we comply in a timely manner,  
12 but the force main and associated structures are in except  
13 for the final lift station in Section 14 that cannot go in  
14 until Section 14 is ready to take effluent.

15 Q. Okay. So as I understand this, the sewage from  
16 the Palm Shadows -- from the Sierra Ridge subdivision goes  
17 to Palm Shadows wastewater treatment plant?

18 A. Correct.

19 Q. That plant is being closed?

20 A. Correct.

21 Q. And turned into a lift station?

22 A. That's correct.

23 Q. The sewage will go through Palm Shadows through  
24 the lift station and will wind up at the Section 14 plant?

25 A. There will be no treatment of the sewage at Palm



1 Shadows. All of those ponds will be gone, and it will be  
2 transported from 9 1/2 E, I believe it is, to 14E.

3 Q. Once that happens, then Mr. Householder will have  
4 sewage treatment capacity for new connections at Sierra  
5 Ridge?

6 A. Absolutely.

7 Q. What is the status of the work to complete the  
8 Section 14 plant expansion?

9 A. The Section 14 is 90 percent completed.

10 Q. When will the remaining 10 percent be completed?

11 A. Once Zenon is funded -- they are owed about a 1.7  
12 million to put cassettes in. Once they put the cassettes  
13 in, we will be able to go.

14 Q. What has stopped you from funding Zenon?

15 A. Well, lack of funds.

16 Q. Do you know when you will have funds to fund that  
17 project?

18 A. That is a good question. We were supposed to  
19 have a loan that closed October, November, December. It  
20 didn't close. When we were here the last time it was  
21 supposed to close.

22 I do not have a closure on that particular  
23 funding, which was more than enough to take care of this.  
24 And so I have gone to other funding sources just as a  
25 backup to make sure.

1       Q.    Is the original loan that you are working on, is  
2   that loan going to fund?

3       A.    I don't know. I don't know what slowed them  
4   down.

5       Q.    Have you communicated with them to find out what  
6   has slowed them down?

7       A.    I have attempted to, but communication is  
8   nonexistent.

9       Q.    Does that mean they don't return your calls?

10      A.    They don't return my calls.

11      Q.    And this is your lender?

12      A.    That's correct. That is why I have gone to a  
13   different source.

14      Q.    And are you starting over with the new source?

15      A.    I have started with the new source out of  
16   Washington, D.C. that specializes in funding for equity of  
17   water companies.

18      Q.    What is the status of the lift station -- well,  
19   before I go onto that, with regard to the new lender out  
20   of Washington, what have you been told regarding their  
21   ability to complete a loan?

22      A.    Well, I just got an e-mail today saying they were  
23   reviewing the documentation I sent to them over the  
24   New Year's and they want to have a conference on Friday.

25      Q.    Do you have any indication when you might be able

1 to close that loan?

2 A. No, but they said it's short term. I have -- we  
3 looked at their web site, and they have closed numerous  
4 different deals.

5 Q. Do you need to obtain Commission approval to  
6 close that loan?

7 A. No, because we are not going to be using assets  
8 of Far West to fund the loan nor will Far West be paying  
9 interest on it.

10 Q. What is the status of the conversion of the Palm  
11 Shadows wastewater treatment plant to a lift station?

12 A. We have to transfer -- we have to convert to a  
13 lift station within just a couple days of the date that  
14 you started up because it has to go somewhere. So the  
15 only thing that is left right now is the lift station is  
16 going to use the wet well that is there at the present  
17 time. The only thing that will have to be done is for us  
18 to go in to the wet well, put the new pumps in, and  
19 connect to the force main that is already within a couple  
20 feet of the wet well.

21 Q. How much will that work cost?

22 A. You are talking for the pumps themselves, I think  
23 it's -- it's \$150,000 for the pumps, and the work has  
24 already been done. You have maybe another 10- or 15,000  
25 more.

1       Q.     Does Far West Water & Sewer have the funding to  
2 complete that project, or is that also dependant upon  
3 additional money coming in?

4       A.     We are making monthly payments to the pump  
5 company. We have knocked down what is owed to them quite  
6 a bit. We paid -- we have been paying for several months  
7 on that.

8       Q.     Back to the consent order, at the top of page 13,  
9 paragraph 4 it states, "Beginning on the effective date of  
10 this consent order, unless approved by ADEQ, Far West  
11 shall not construct any new connections to the existing  
12 Palm Shadows wastewater treatment plant collection  
13 system."

14      A.     Yes.

15      Q.     And what is the effective date of this consent  
16 order, Mr. Capestro?

17      A.     I believe it's October 24, 2006.

18      Q.     Since October 24, 2006 has Far West Water & Sewer  
19 constructed any new connections to the Palm Shadows  
20 wastewater treatment plant?

21      A.     I stand corrected. It's October 31, 2006.

22      Q.     Okay. Same question then, since October 31, 2006  
23 has Far West Water & Sewer constructed any new connections  
24 to the Palm Shadows wastewater treatment plant?

25      A.     There was one without the approval of ADEQ.

1 Q And why did you not obtain ADEQ's approval?

2 A Because it was my error. When the paperwork came  
3 to me, it said it was part of the Section 14 plant, and I  
4 didn't double-check the address that carefully. And  
5 afterwards, and it was under construction, I realized  
6 exactly where it was at.

7 Q Did you notify ADEQ after the fact?

8 A Yes.

9 Q And did ADEQ do anything after you notified them?

10 A No.

11 Q Where was that connection?

12 A I believe it was somewhere on 35th, but I'm not  
13 sure.

14 Q Was it within a subdivision?

15 A It was an in-fill lot. It was an individual on a  
16 subdivision that had already been completed.

17 Q Do you recall the name of the subdivision?

18 A I don't remember.

19 Q Do you know whether it was east or west of  
20 Fortuna Road?

21 A It would be west of Fortuna Road.

22 Q Have there been connections to the Palm Shadows  
23 plant with the approval of ADEQ?

24 A There was one man that petitioned directly to  
25 ADEQ that got approval.

1       Q.     So is it your testimony that since October 31,  
2     2006 there have only been two new connections to the Palm  
3     Shadows wastewater treatment plant?

4       A.     Based upon the definition with ADEQ and the  
5     County, there has only been two that were not previously  
6     approved. We were told that anything that already had a  
7     building permit had to go forward, and we did the same  
8     thing with Mr. Householder, if he had already made a  
9     building permit or made a request.

10      Q.     How many sections were made for residences that  
11     had building permits issued?

12      A.     It's part of the discovery that I gave to you, as  
13     part of the last discovery report.

14      Q.     Mr. Capestro, with regard to the individual that  
15     went directly to ADEQ, was that a single lot?

16      A.     It was a single lot.

17      Q.     Was it a developer?

18      A.     No.

19      Q.     A private owner?

20      A.     It was a man that had already sold his RV and  
21     wanted to move on. There's a question there as to whether  
22     or not it had water and sewer service with the previous  
23     tenant, and we had to honor anyone who had a previous  
24     tenant with water and sewer.

25      Q.     Mr. Capestro, I have handed you a copy of the

1 letter dated November 18, 2009 from Norm James to the  
2 Commissioners. I have identified that as Exhibit A-35.

3 Are you familiar with this letter?

4 A. Yes, I am.

5 Q. And it attaches a copy of a letter from  
6 Curtis Cox, who is an assistant attorney general to  
7 David Kimball, and it's regarding State of Arizona versus  
8 Far West Water & Sewer, Inc., and H & S Developers, Inc.,  
9 in Docket CV 2008-021676?

10 A. Yes.

11 Q. Have you seen that document before?

12 A. Yes, I have.

13 Q. Okay. This document reference a settlement  
14 agreement that is pending between Far West Water and the  
15 Department of Environmental Quality?

16 A. That's correct.

17 Q. Did this action that is referenced in the Re:  
18 line, did that arise out of this consent order that we  
19 have been discussing?

20 A. No.

21 Q. This was a separate -- did this arise out of a  
22 separate consent order?

23 A. No.

24 Q. What does this complaint pertain to?

25 A. The complaint goes all the way back to 1989 as to

1 whether or not there were reporting violations by Far West  
2 and when it was just a water company and goes -- when Far  
3 West was just a subdivision on H & S Developers and goes  
4 all the way through whenever the complaint was filed in  
5 2008.

6 Q This document states that -- well, the cover  
7 letter from your attorney to the Commission states that  
8 Far West and its management has made substantial progress  
9 in resolving Far West compliance issues and expects to  
10 shortly conclude a settlement.

11 What is the status of your efforts to conclude a  
12 settlement?

13 A The -- if you take a look at paragraph 3, the  
14 last sentence, "ADEQ requests that Far West prepare and  
15 submit a schedule identifying all major tasks to be  
16 completed, with deadlines for completion, at each WWTP."

17 That has been submitted to ADEQ. ADEQ has  
18 accepted our schedule. I'm just waiting for ADEQ to get  
19 back to us with a formal document.

20 MR. CROCKETT: Your Honor, I would move the  
21 admission of Exhibits A-32 and A-35.

22 ALJ MARTIN: Mr. Black?

23 MR. BLACK: No objection.

24 ALJ MARTIN: They are admitted.

25 (Exhibit A-32 and A-35 were admitted into



1 evidence.)

2 Q (BY MR. CROCKETT) Mr. Capestro, on page 2, line  
3 26 of your direct testimony you state that Far West Water  
4 & Sewer --

5 A Line what?

6 Q It's line 26. I'm sorry. It's page 2, line 26.  
7 It states that Far West Water & Sewer "is seeking  
8 emergency rate relief due to financial insolvency."

9 Is Far West Water & Sewer financially insolvent?

10 A As I testified before, Far West Water is not  
11 insolvent; Far West sewer is. When we report to the ACC,  
12 we report the two divisions separately.

13 Q Okay. And in your testimony you have defined Far  
14 West Water & Sewer Company as the company, or Far West.

15 So that is how you have used it in this section.

16 So you would clarify your testimony on page 2 to  
17 indicate that this only applies to the sewer company?

18 A It's one company under one umbrella.

19 Q I'm sorry. The sewer division?

20 A Correct, the sewer division is insolvent. For  
21 years the water division has been carrying the sewer  
22 division, which means that the water division cannot keep  
23 up with its own rates.

24 Q But in terms of the legality, Far West Water &  
25 Sewer Company, Inc., or Far West Water & Sewer, Inc., is

1 that entity financially insolvent?

2 A. The company cannot pay for the rest of its  
3 improvements out of income, which means that technically  
4 its debts are greater than its cash flow but not greater  
5 than its assets.

6 So I have had a problem with the word  
7 "insolvency" this entire time because cash-flowwise, I can  
8 make the normal payments. I just cannot complete the  
9 plants, and the amount that is owed for plants is between  
10 5- and \$6 million when I did this whole thing.

11 Q. But you are the one that chose that word  
12 "insolvency."

13 A. I don't think so, but that is fine.

14 Q. Who chose it? If this is your testimony, if you  
15 didn't chose it, who did?

16 A. I guess I was not particular enough when it was  
17 given to me.

18 Q. And who did prepare this testimony?

19 A. Well, it was prepared in conjunction with  
20 counsel.

21 Q. Did you take the lead in preparing it or did your  
22 legal counsel?

23 A. I did not take the lead. I reviewed it.

24 MR. CROCKETT: I apologize, Your Honor, it  
25 appears that I did not write the exhibit number on the

1 copies of this, but I marked it as Exhibit A-33.

2 Q. (BY MR. CROCKETT) Mr. Capestro, do you have  
3 Exhibit A-33 before you?

4 A. Yes, I do.

5 Q. This is a copy of Commission Decision 71447.  
6 Have you seen this decision before?

7 A. I have.

8 Q. Is this the Commission's decision in the utility  
9 company's emergency rate case?

10 A. Yes, it is.

11 Q. At page 33, paragraph 40, is a finding of fact  
12 which states as follows: "This proceeding has raised  
13 issues concerning the ability of the current management to  
14 manage the completion of the project and it is reasonable  
15 to direct Staff to conduct an investigation and formulate  
16 a recommendation to the Commission in the permanent rate  
17 case or sooner, whether it is in the public interest to  
18 have an interim operator appointed for the company."

19 Would you agree with me, Mr. Capestro, that the  
20 appointment of an interim operator is a step taken by the  
21 Commission in very extreme cases?

22 A. I think it would be ridiculous, but I agree.

23 Q. Would you agree that the Commission does not  
24 appoint interim operators for utilities that are well run?

25 A. I am not a utilities attorney. I do not know

1 what this Commission does or any of the previous  
2 commissions did.

3 Q In Decision 71447 did the Commission grant the  
4 emergency rate relief you requested?

5 A No, it did not. It said in the order that we had  
6 sufficient funds to meet current cash flow requirements,  
7 that what we really needed was an infusion of capital,  
8 which we are trying to find.

9 Q Do you disagree with the Commission's finding  
10 that there is sufficient cash to meet your cash  
11 requirement?

12 A If we did not have to improve the facilities and  
13 we did not have the commitment on the sewer, yes, we  
14 would. But the Commission also approved a loan for  
15 \$25 million, which requires a significant commitment to  
16 pay on that loan, which in turn it pays for a majority of  
17 the improvements that we have out there.

18 The biggest problem is between the time that we  
19 got our estimates and the time we finally got ADEQ  
20 approval to construct there was a \$6 million difference  
21 between what it costs us to do and what it -- it was  
22 estimated to do when we got the loan.

23 MR. CROCKETT: Your Honor, at this time I would  
24 move the admission of Exhibit A-33 or alternatively Your  
25 Honor can take administrative notice given that it is a

1 Commission decision.

2 ALJ MARTIN: Mr. Black, any objection to its  
3 admission?

4 MR. BLACK: No, Your Honor.

5 ALJ MARTIN: All right. Then we will admit it as  
6 an exhibit.

7 (Exhibit A-33 was admitted into evidence.)

8 Q. (BY MR. CROCKETT) Mr. Capestro, in your direct  
9 testimony on page 1, lines 10 and 11, you state that until  
10 the beginning of 2006 you assisted the company primarily  
11 in legal matters as they arose.

12 Does this mean that prior to the beginning of  
13 2006 you were not involved in the day-to-day operations of  
14 Far West Water & Sewer?

15 A. That's correct.

16 Q. Prior to the beginning of 2006 did you meet with  
17 developers regarding water and sewer agreements for their  
18 developments?

19 A. No, I did not.

20 Q. Prior to the beginning the 2006 did you prepare  
21 main extension agreements for the utility?

22 A. No, I did not.

23 Q. Do you prepare main extension agreements today as  
24 part of your work for Far West Water & Sewer?

25 A. I have referred that out to counsel to assist.

1       Q.     Does that mean that you do not prepare main  
2 extension agreements?

3       A.     I give counsel the information as to what we are  
4 going to have, and I get back a draft for review with my  
5 customers.

6       Q.     Prior to the beginning of 2006 did you submit  
7 water main extension agreements to the Arizona Corporation  
8 Commission's Utilities Division for approval?

9       A.     Did I?

10      Q.     Yes.

11      A.     Or did the company?

12      Q.     Did you?

13      A.     No.

14      Q.     Do you submit those to the Commission today for  
15 approval?

16      A.     There has been very little since 2006, and we  
17 have some pending that are supposed to be delivered to the  
18 Commission.

19      Q.     Will you submit those or will someone else do  
20 that?

21      A.     Once I have them approved by counsel, they will  
22 go on and be submitted.

23      Q.     Prior to the beginning of 2006 did you receive  
24 and review plans and approvals submitted by developers for  
25 their development?

1 A. Personally?

2 Q. Yes.

3 A. No.

4 Q. Prior to the beginning of 2006 were you involved  
5 either directly or indirectly in negotiations with Spartan  
6 regarding water and sewer service to Sierra Ridge?

7 A. First time I heard of Spartan was April, May of  
8 2006.

9 Q. Prior to the beginning of 2006 did you ever have  
10 any dealings with Brian Householder?

11 A. Never met him.

12 Q. So is it accurate to say that you became aware of  
13 the existence of Brian Householder in the April 2006 time  
14 frame?

15 A. I became aware of him when he came to a meeting.

16 Q. You remember when that meeting was?

17 A. It would have been April or May of 2006. The  
18 purpose of the meeting was to introduce everybody to the  
19 new engineer, Coriolis Engineering, and have them state  
20 what they were trying to do.

21 Q. In your direct testimony at page 1, lines 21  
22 through 23, you state as follows: "At that time the  
23 company had a director of operations, Dusty Thomas, and a  
24 field manager, Mark Kaveney. By the end of 2006 both  
25 Mr. Thomas and Mr. Kaveney were gone."

1 A. Yes.

2 Q. "Since that time I guess you could say that I am  
3 the director of operations, although I have no title."

4 Did you replace Mr. Thomas?

5 A. Mr. Thomas had more duties than I do. We have  
6 spread some of the duties around. But I'm in the office  
7 every day.

8 Q. Do you function as a director of operations?

9 A. Basically everything comes across my desk. If  
10 you call that director of operations, I guess it is.

11 Q. Well, I'm just trying to use the terminology from  
12 your testimony.

13 A. I was trying to come up with some description of  
14 what I did, and that is the closest I could come to it.  
15 I'm not an officer, and I'm not really an employee.

16 Q. And you have identified Mr. Kaveney as field  
17 manager; is that correct?

18 A. Yes.

19 Q. Now, Mr. Kaveney signed documents as general  
20 superintendent; would you agree?

21 A. I believe I have seen that.

22 Q. Is there a difference in your mind between a  
23 general superintendent and a field manager?

24 A. Not as far as Far West is concerned. The only  
25 thing I could say is that he worked for Mr. Thomas.



1 Q At the present time did Far West Water & Sewer  
2 have an employee who is identified as a field manager?

3 A No, we do not.

4 Q And then I think you describe your duties  
5 starting at line 1, page 23 of your testimony. This is  
6 what you say: "With the permission of the officers of the  
7 company, I sign all checks issued by the company. I  
8 approve most purchase orders and work orders and negotiate  
9 contracts. I work on budget. I work on permanent  
10 financing approved by the ACC. I'm in direct  
11 communication with the purveyors supplying equipment for  
12 wastewater treatment plant improvements. I approve the  
13 hiring, promotion, and discharge of personnel. I review  
14 safety standards with the company's safety officer. I  
15 assist in resolving customer complaints. I work with  
16 County and City officials, and I'm in the field almost  
17 every day."

18 Is that still a correct summary of your duties?

19 A It sure is.

20 Q You testified that you aren't on the company's  
21 payroll and that you bill Sierra Ridge for the legal  
22 services you render?

23 A Correct.

24 Q When you are performing services that are not of  
25 a legal nature for Sierra Ridge, how do you charge for

1 those services?

2 A. I attempt to charge only for the legal services  
3 that we have had. We have had so many things go on.  
4 Mr. Householder's complaint, the ADEQ complaint, the  
5 matter before the ACC, and the amounts charged at legal  
6 rates was more than enough to compensate me. I'm not  
7 charged separately for the time I spent there.

8 Q. So for all of this other work that you do as  
9 described in your testimony that is of a nonlegal nature,  
10 you do that as a volunteer for the company?

11 A. Oh, no, not a volunteer. I'm a husband.

12 Q. Okay. Well, I think I understand what that  
13 means. But, for example, when you say you sign checks  
14 issued by the company, you don't charge the company for  
15 the time you spend signing checks?

16 A. No. No, I don't. This is a family company. We  
17 do as much as we can, and when I look at legal bills, I  
18 think that is sufficient.

19 Q. Okay. I won't go there as much as I'd like to.  
20 I would --

21 A. Probably not as high as yours.

22 Q. Probably not, but look at the caliber of legal  
23 work here.

24 A. I have more experience here, but not with the ACC  
25 or other utilities.

1       Q.     What percent of your time do you attribute to  
2 legal matters versus nonlegal matters for the utility?

3       A.     In the past it's been at least 50 percent for  
4 legal matters and 50 percent for the rest. I am normally  
5 working seven days a week whether I do it here or in San  
6 Diego.

7       Q.     One of the things that you do, according to your  
8 description of duties, is you assist in resolving customer  
9 complaints?

10      A.     Correct.

11      Q.     What have you done in this case to assist in  
12 resolving the complaint of Spartan?

13      A.     I retained Mr. Shapiro asking him to assist me.  
14 I did meet with Mr. Householder and forwarded on the stuff  
15 that he had to Mr. Shapiro, and apparently he and  
16 Mr. Shapiro do not get along.

17      Q.     So when you receive a customer complaint at the  
18 utility company, your general -- the way of assisting is  
19 you hand that off to an attorney?

20      A.     No. No. Customer -- you asked about Spartan  
21 Homes and Mr. Householder. That is a developer. Most of  
22 the complaints that we have had is about their bill, about  
23 the amount of water usage, about whether or not there is  
24 some odor, whether there is a leak. If there is a leak on  
25 the customer side are we responsible for that, and I go

1 out to customer's homes because I think there has been a  
2 lack of interaction between customers and the people that  
3 actually own the company.

4 I don't own the company, but I feel through my  
5 wife that I have a big stake in it. And then recently we  
6 just hired a man that has gray hair so he can go out and  
7 talk to these people instead of having young people go  
8 talk to the people to assist me.

9 Q Are you familiar with Mr. Householder's Sierra  
10 Ridge development?

11 A I have been there. I have driven through it.

12 Q What do you know about the development?

13 A I know where it's at. I know that it's 113 lots.  
14 I know that he had a Phase I and a Phase II that somehow  
15 became a Phase I. There was going to be a Phase III,  
16 which is now a Phase II. And then I recently realized  
17 where the commercial property is, and that is right next  
18 to, I believe, something called Yuma Ventures.

19 Q Does Far West Water & Sewer currently provide  
20 water and sewer service to customers residing within the  
21 Sierra Ridge subdivision?

22 A Yes, it does.

23 Q Who paid for the water infrastructure constructed  
24 to serve Sierra Ridge Unit 1?

25 A Well, Far West did not. Mr. Householder

1 presented bills that he said he had paid, so I assume he  
2 did or Spartan Homes did.

3 Q. Mr. Capestro, I have handed you an exhibit marked  
4 as A-25. That is a copy of a letter dated April 14, 2005  
5 on Far West Water & Sewer, Inc. letterhead. It's  
6 addressed to Yuma County Development Services. It's  
7 signed by Mark Kaveney, general superintendent.

8 Have you seen this letter before?

9 A. I have.

10 Q. In your testimony at page 7, line 1 -- actually  
11 beginning with the question on line 2, the question is:  
12 "Has the onsite infrastructure at Sierra Ridge been  
13 accepted by the company?

14 "ANSWER: Yes, the onsite infrastructure was  
15 accepted by Mr. Kaveney in April 2005."

16 When you say it was accepted in 2005, is this the  
17 document that makes that effective, this April 14, 2005  
18 document that you are looking at?

19 A. It is; however, after investigation I find that  
20 the letter is incorrect.

21 Q. How is the letter incorrect?

22 A. Because at the time the letter was issued,  
23 whoever wrote the letter did not realize that its units 1  
24 and 2 had been combined to Unit 1. They did not accept  
25 the present Unit 2.

1       Q.     Okay.  So with that correction -- I understand  
2     that.

3                 Units 1 and 2 refers to the original way that the  
4     subdivision was configured.  And Unit 1 and 2 are not  
5     combined into a single Unit 1.

6                 Is that your understanding?

7       A.     That's correct.  So my only concern could be that  
8     since the as-builts refer to them as Unit 1 when this was  
9     written, either the as-builts were not reviewed or they  
10    did not notice they had been combined.  I don't know.

11       Q.     Okay.  But with regard to the 113 lots in Unit 1,  
12    Far West Water & Sewer, Inc. has accepted the water and  
13    sewer infrastructure?

14       A.     Yes.

15                 MR. CROCKETT:  Your Honor, I would move the  
16    admission of Exhibit A-25.

17                 ALJ MARTIN:  Mr. Black?

18                 MR. BLACK:  No objection.

19                 ALJ MARTIN:  Okay.  It's admitted.

20                 (Exhibit A-25 was admitted into evidence.)

21                 MR. CROCKETT:  Your Honor, give me -- I think I'm  
22    approaching a good stopping point, so let me look at my  
23    outline.

24                 THE WITNESS:  For the day?

25       Q.     (BY MR. CROCKETT)  Mr. Capestro, I asked you a

1 question about the water infrastructure and specifically  
2 who paid for that. I'm going to ask you the same question  
3 about the sewer infrastructure.

4 Did Sierra Ridge pay for the sewer infrastructure  
5 that was installed to serve Sierra Ridge Unit 1?

6 A. No, it did not.

7 Q. Was that funded by Spartan?

8 A. Far West didn't pay for it.

9 Q. Do you have invoices in your filing indicating  
10 that that was provided by Spartan?

11 A. I have invoices from Noll Construction to  
12 Spartan. I believe Spartan -- I was provided with  
13 invoices. I don't remember seeing canceled checks, and I  
14 remember the various invoices that you showed yesterday I  
15 had seen before. If those are what you are talking about,  
16 those are the invoices I had seen.

17 MR. CROCKETT: Your Honor, this would be a good  
18 place for a break.

19 ALJ MARTIN: Okay. Before we take a break,  
20 Mr. Crockett, do you mind if I ask a question regarding  
21 Exhibit A-25?

22 MR. CROCKETT: By all means.

23 ALJ MARTIN: It might be coming up later, but I  
24 just wanted to clear it up.

25 Mr. Capestro, could you please read the first

1 paragraph?

2 THE WITNESS: "Far West Water & Sewer, Inc. is  
3 granted a Certificate of Convenience and Necessity by the  
4 Arizona Corporation Commission to provide water and sewer  
5 utility service to the Sierra Ridge Units 1 and 2."

6 ALJ MARTIN: Okay. At the time this letter was  
7 written in 2005 did Far West Water & Sewer have a CC&N to  
8 provide sewer service within this area that Sierra Ridge  
9 currently sits?

10 THE WITNESS: As I'm looking at the maps in  
11 detail, the CC&N is contiguous to this but it's not within  
12 the CC&N.

13 ALJ MARTIN: Thank you.

14 MR. CROCKETT: Your Honor, if I could follow up  
15 on a quick question there.

16 Q. (BY MR. CROCKETT) Mr. Capestro, are you familiar  
17 with terminology used around utilities that I have heard  
18 before about run-along rights?

19 A. No.

20 Q. Do you know whether or not the Commission allows  
21 a utility company to extend service to land that is  
22 immediately contiguous to the existing CC&N of the utility  
23 company?

24 A. That is what I have been advised.

25 Q. And is the Sierra Ridge subdivision immediately



1 contiguous to your existing CC&N?

2 A. It is. And it's within our water CC&N.

3 Q. All right.

4 A. All right.

5 Q. So there was never an issue about whether or not  
6 it was within your water CC&N; correct?

7 A. No. No. The water CC&N is one big block north  
8 and south of the freeway. The sewer CC&N, because of the  
9 early testimony about septic tanks, is a hodgepodge of  
10 various lots that were brought into it. There is a lot of  
11 open spaces.

12 Q. Do you have an opinion about whether or not the  
13 company is currently authorized to serve the Sierra Ridge  
14 development with sewer service notwithstanding the fact  
15 that it's outside of your CC&N?

16 A. I believe that it's authorized to do so since  
17 it's contiguous.

18 MR. CROCKETT: That's all I have got, Your Honor.

19 ALJ MARTIN: All right. Thank you. Let's go  
20 ahead and take a break. Let's come back at 20 until on  
21 that clock.

22 (Whereupon, a recess was taken from 2:23 p.m.  
23 until 2:46 p.m.)

24 ALJ MARTIN: Let's go back on the record.

25 Mr. Crockett, you may continue.

1 MR. CROCKETT: Thank you, Your Honor.

2 Q. (BY MR. CROCKETT) Mr. Capestro, Mr. Kaveney  
3 testified at pages 170 and 171 of his deposition that Far  
4 West Water & Sewer had a sewer main within 20 feet of the  
5 Sierra Ridge development at the time Mr. Householder  
6 requested service.

7 Do you have any reason to dispute that statement  
8 by Mr. Kaveney?

9 A. No, I do not.

10 Q. And he also testified at page 171 of his  
11 deposition that Far West Water & Sewer had a 12-inch water  
12 main within the utility easement located on a commercial  
13 portion of the Sierra Ridge development.

14 You don't have any reason to dispute that Far  
15 West Water & Sewer had an existing 12-inch water main on  
16 Spartan's commercial property at the time Mr. Householder  
17 requested service?

18 A. I believe that it is -- the reason I was  
19 hesitating, Yuma Ventures was having some questions on  
20 water and sewer at the present time, which is right next  
21 to the Mr. Householder's project. And without our aerial  
22 map in front of me, which shows the sizing and everything  
23 else, I really don't know. But I have no reason to doubt  
24 it. I know we were looking into it.

25 Q. Okay. And at page 171, lines 17 through 20 of

1 his deposition, Mr. Kaveney stated as follows:

2 "QUESTION:" -- well, I guess this is my question  
3 and his answer --

4 "QUESTION: So to tie into your water system,  
5 he," referring to Mr. Householder, "only needed to  
6 essentially connect to a pipe that was already on his  
7 property?

8 "ANSWER: Uh-huh."

9 Do you have any reason to disagree with this  
10 testimony by Mr. Kaveney?

11 A. This is for water?

12 Q. Yes.

13 A. Once again, last week I was going through whether  
14 or not there were easements across Mr. Householder's  
15 property, and my only reason -- I don't know if it goes on  
16 the edge of his property or in the middle of his property  
17 or what, but I had referred that to the engineers to take  
18 a look at. I don't want to be evasive, I just don't know.

19 Q. Fair enough.

20 On pages 10 through 12 of Mr. Kaveney's  
21 deposition transcript he describes his work experience  
22 prior to working for Far West Water & Sewer.

23 Do you have any reason to dispute the accuracy of  
24 Mr. Kaveney's description of his prior work experience?

25 A. No, I believe he is correct. I checked into it.

1 Q Did you take Mr. Kaveney's deposition -- I'm  
2 sorry -- were you present at Mr. Kaveney's deposition?

3 A Yes, I was.

4 Q And you have read his transcript?

5 A Yes, I have.

6 Q Mr. Kaveney testified that he holds an Arizona  
7 Grade IV certification for water distribution, wastewater  
8 water collection, and wastewater treatment.

9 Do you have any reason to dispute that statement  
10 by Mr. Kaveney?

11 A I believe he has four IVs, not three.

12 Q Four Grade IVs?

13 A That's correct.

14 Q And you indicated that that is the highest  
15 certification grade you can get in the state of Arizona?

16 A That's correct. You can go higher in California.

17 Q Mr. Kaveney testified that he started his  
18 employment with Far West Water & Sewer on September 29,  
19 2003.

20 Is this start date accurate?

21 A That is.

22 Q And he also testified that he ended his  
23 employment with Far West Water & Sewer on December 15th,  
24 2006.

25 Is that end date accurate?

1 A. It was in December 2006.

2 Q. Okay.

3 A. I'm not sure of the date.

4 Q. Was Mr. Kaveney terminated by Far West Water &  
5 Sewer?

6 A. No. It was a mutual agreement.

7 Q. Were you personally involved in the discussion  
8 with Mr. Kaveney about his separation from Far West Water  
9 & Sewer?

10 A. Yes, I was.

11 Q. Mr. Capestro, were you personally involved in the  
12 hiring of Mr. Kaveney?

13 A. No.

14 Q. Do you know who was?

15 A. I believe Dusty Thomas hired him.

16 Q. Would Mr. Thomas had gotten input from the board  
17 of directors?

18 A. I don't remember Mr. Thomas presenting his  
19 qualifications to the board of directors before he hired  
20 him.

21 Q. Do you know whether Mr. Thomas did any due  
22 diligence on Mr. Kaveney before he was hired?

23 A. I was not involved from day to day so I don't  
24 know that he did. All I know is that we had an opening  
25 that had to be filled quickly.

1       Q.    Do you know whether Mr. Kaveney was selected from  
2 multiple applicants?

3       A.    I do not know that.

4       Q.    You indicated that the opening had to be filled  
5 quickly.

6               Why is that? What was the urgency around filling  
7 that?

8       A.    Mr. Murphy Campbell had been -- he left  
9 unexpectedly.

10       Q.    Was he terminated?

11       A.    He was arrested.

12       Q.    On what -- was he arrested for anything having to  
13 do with his work for Far West Water & Sewer?

14       A.    No.

15       Q.    Mr. Capestro, I think I heard you say a minute or  
16 two ago that with regard to Mr. Kaveney's work experience  
17 you were familiar with that as he outlined it in his  
18 deposition?

19       A.    Correct.

20       Q.    But you weren't involved in the hiring of  
21 Mr. Kaveney?

22       A.    No.

23       Q.    And so how is it that you became familiar with  
24 his work background?

25       A.    He was a witness in the criminal matter, and I

1 double-checked his background before we put him on the  
2 stand.

3 Q At that time when you double-checked his  
4 background, was there anything in his background that  
5 raised any red flags for you?

6 A Not a one.

7 Q Mr. Capestro, I have handed you a document that  
8 has been marked as Exhibit A-30. It's an organizational  
9 chart. The title of it is "Far West Water & Sewer, Inc.  
10 Wastewater Division."

11 Have you seen this document before?

12 A Yes, I have.

13 Q And this was a document that was prepared by Far  
14 West Water & Sewer?

15 A I don't know who prepared it.

16 Q Where did you -- how is it that you saw this  
17 document?

18 A It was part of the organizational charts that  
19 Coriolis was putting together so we had a full plan and  
20 implementation. We hired Coriolis to do a number of  
21 things for Far West Water & Sewer, and this came about at  
22 that time.

23 Q Now, I -- Mr. Capestro, just so you know, I  
24 obtained a copy of this chart from the file on Far West  
25 Water & Sewer at the Department of Environment Quality.

1 A. Okay.

2 Q. Which I assume this was placed there by Far West  
3 Water & Sewer or Coriolis.

4 A. I was trying to answer the question as to who  
5 prepared it.

6 Q. Right.

7 A. I know it was prepared either at our direction or  
8 by us. A lot of the documents at ADEQ were filed by  
9 Coriolis Engineering.

10 Q. Is this -- and do you know when this document  
11 would have been prepared?

12 A. It would have to have been sometime in 2006.

13 Q. And is this document an accurate description of  
14 the wastewater division organization at Far West Water &  
15 Sewer?

16 A. At that time.

17 Q. And this has Mr. Kaveney reporting directly to  
18 Paula Capestro; is that correct?

19 A. That's correct.

20 Q. Now, you say at that point in time -- at an  
21 earlier point of time would this chart have looked  
22 different than this?

23 A. Yes. This was early 2005 or 2006, and  
24 Dusty Thomas would have been between.

25 Q. Okay. Now, this probably could not have been



1 late 2007. That would be after Mr. Kaveney was gone.

2 A. Correct. But Dusty Thomas left in October.

3 Kaveney left in December. So I guess it would have been  
4 right in between the two.

5 Q. Okay. So prior to this iteration of this org  
6 chart, if you had had an org chart, it would have  
7 Dusty Thomas in between Mark Kaveney and Paula Capestro?

8 A. That is correct.

9 MR. CROCKETT: Your Honor, I move the admission  
10 of A-30.

11 ALJ MARTIN: Mr. Black?

12 MR. BLACK: No Objection, Your Honor.

13 ALJ MARTIN: It's admitted.

14 (Exhibit A-30 was admitted into evidence.)

15 Q. (BY MR. CROCKETT) Mr. Capestro, would you  
16 describe Mr. Kaveney's work responsibilities for Far West  
17 Water & Sewer at the time you worked for the company?

18 A. He was in charge of everything on the outside  
19 that had to do with either water or sewer, reporting to  
20 ADEQ, reporting to the ACC, and to bring issues to either  
21 Dusty Thomas or to Paula Capestro as they arise.

22 Q. I'm going to ask you a little bit of a laundry  
23 list of question.

24 Was Mr. Kaveney in charge of preparing main  
25 extension agreements?

1       A.     Until March -- until April of 2006, yes, he was.

2       Q.     Okay.  So prior to April 2006 Mr. Kaveney was in  
3 charge of preparing main extension agreements?

4       A.     That's correct.

5       Q.     And prior to April 2006 he was in charge of  
6 preparing water service and sewer service agreements?

7       A.     There was a period of time that all of those were  
8 done by Dusty Thomas, and at some point in time  
9 Dusty Thomas assigned those to Mr. Kaveney.  I don't  
10 exactly know when the time was.

11      Q.     Prior to April 2006 was Mr. Kaveney in charge of  
12 signing capacity assurance letters on behalf of Far West  
13 Water & Sewer?

14      A.     Same answer.  It was a division between  
15 Mr. Thomas and Mr. Kaveney.

16      Q.     So at any particular time if Mr. Kaveney's  
17 signature appeared on a capacity assurance letter or on a  
18 water service or sewer service agreement, you wouldn't  
19 have any reason to dispute that he was authorized to sign  
20 that document?

21      A.     I don't have any reason to dispute it or to say  
22 that he had the authority.  That was before the time that  
23 I was there on a full-time basis.

24      Q.     Did Mr. Kaveney's job responsibilities include  
25 interfacing with developers?

1       A.     To begin with, most of the developers interfaced  
2 with Mr. Thomas, and before that they all interfaced with  
3 Mr. Weidman.

4             At what time he -- Mr. Kaveney started  
5 interfacing with the developers, I don't know. I know by  
6 late -- by late 2005 he was doing that.

7       Q.     Now, how do you know that if that was prior to  
8 your time becoming involved in the day-to-day operations  
9 of the utility?

10       A.     I was recollecting Mr. Kaveney's testimony in his  
11 deposition. So outside of his own testimony, I don't  
12 know.

13       Q.     So is it fair to say with respect to many things  
14 pertaining to the day-to-day operations of the utility  
15 company, if it was prior to the beginning of 2006, you  
16 would have to rely upon what you read in Mr. Kaveney's  
17 deposition or what you were able to glean from documents  
18 in the file?

19       A.     Not necessarily. I would also have conversations  
20 with Mr. Thomas.

21             My direct link to what was happening was  
22 Mr. Thomas and everything flowed down from him.

23       Q.     And that -- had you had discussions with  
24 Mr. Thomas prior to the beginning of 2006?

25       A.     I had discussions with Mr. Thomas before the

1 beginning of 2006, yes.

2 Q. Were those regular discussions?

3 A. Whenever an issue arose that he felt that he  
4 wanted to bring me in on.

5 Q. Would it be a legal issue or a nonlegal issue?

6 A. He broached the subject as to hiring the engineer  
7 that I mentioned before because he knew he was having  
8 problems in 2005.

9 And, no, it wasn't just legal issues. It was  
10 issues that were in the gambit, but he was not giving me  
11 everything day-to-day. It was just what he felt I should  
12 communicate things to Paula or Sandy or Dorothy.

13 Q. Did Far West Water & Sewer have a written job  
14 description for Mr. Kaveney's position?

15 A. I don't remember if I have seen one or not.

16 Q. Are you aware of one as you sit here today?

17 A. I have seen so many documents. I really don't  
18 remember.

19 Q. Do you know how Mr. Kaveney's job  
20 responsibilities were communicated to him?

21 A. No, I do not.

22 Q. Does Far West Water & Sewer have a general  
23 superintendent position to date?

24 A. No. We have broken it down -- did you say Far  
25 West Water & Sewer or Far West Water & Sewer sewer

1 division?

2 Q Well, let's break it down by divisions.

3 Does either division have a general  
4 superintendent?

5 A The water side has a general superintendent. The  
6 sewer side has two for sewer because of the complexities  
7 of the various plants. And it's broken down between the  
8 two between north of the freeway and south of the freeway.

9 And then there is a person that is in charge of  
10 distribution of water.

11 Q At page 31, lines 2 through 5 of his deposition,  
12 Mr. Kaveney testified that Far West Water & Sewer did not  
13 have a written description of his job duties as general  
14 superintendent.

15 Do you have any reason to dispute his testimony  
16 on that issue?

17 A I don't know one way or the other.

18 Q But you don't know of anything that would  
19 contradict that testimony?

20 A I never looked for one.

21 Q Well, if you are involved in the day-to-day  
22 operations of a utility company, would you not be aware of  
23 if there was such a document that outlined the job  
24 responsibility of a general superintendent?

25 A I'm finding documents daily. There is massive

1 amounts of documents with that company, and I feel that  
2 the company needs the input of somebody there every day,  
3 like my wife and I are doing.

4 But we are trying to get through the mountain.

5 Q. Where do you find these documents?

6 A. Most of them -- some of them are at the water  
7 treatment plant. Most of them are at the administration  
8 building.

9 Q. Water treatment plant? Is that the location  
10 where Mr. Kaveney would have had an office when he was  
11 employed at the company?

12 A. Well, I know of his office at the administration  
13 building. I was unaware of the office that  
14 Mr. Householder had talked about, but it could have been  
15 that he was over there in distribution because we have a  
16 couple little offices over there.

17 Q. Does an office exist where Mr. Householder  
18 indicates that it exists at the water treatment plant?

19 A. We have two offices next to the treatment plant  
20 for distribution, one office inside the distribution  
21 building, and then there is another building that has  
22 three rooms in it. And I was unaware that anybody used  
23 that for offices, but that sounds like what  
24 Mr. Householder was talking about.

25 Q. Mr. Capestro, do you know what training

1 Mr. Kaveney received from Far West Water & Sewer regarding  
2 his job responsibilities?

3 A. Mr. Kaveney had already been a supervisor in  
4 wastewater and water and qualifications. He assisted in  
5 training other people. And I do know that he worked  
6 closely with Gary Sims, who had been with the company for  
7 about -- for a number of years. But I don't know if he  
8 had any formal training. I do know that he received  
9 training with the safety supervisor, because that is  
10 required.

11 Q. Is this the safety supervisor for Far West Water  
12 & Sewer?

13 A. That's correct. We have an OSHA-certified  
14 trainer in all events that is full-time, primarily for  
15 confined space and other dangerous activity.

16 Q. Did you have -- just out of curiosity -- did the  
17 company have an OSHA-certified trainer when the company  
18 was cited for violations regarding the confined space  
19 rules?

20 A. We had a safety officer that was going to classes  
21 but had not received the certification.

22 Since that time we have greatly upgraded the  
23 position. That person has nothing else to do but take  
24 care of that safety.

25 Q. And that upgrading, was that due to the two

1 deaths and the injury that occurred?

2 A. Yes. It was a shock that something like that  
3 could happen.

4 Q. Do you know whether Far West Water & Sewer has  
5 any written training materials that would be relevant for  
6 a superintendent?

7 A. It has quite a bit of written materials on  
8 safety. I'm not aware of any written manuals for the  
9 superintendent. As I mentioned to you earlier, we have  
10 retained the services of a new employee that is writing  
11 manuals for us and going through everything we have.

12 Q. So would it be accurate to say that Far West  
13 Water & Sewer does not currently have written training  
14 material or policy materials that lay out the company's  
15 policies with regard to water and sewer service  
16 agreements, capacity assurance letters, main extension  
17 agreements?

18 A. We do have manuals of company policies for the  
19 water company, and we do have the procedures as was sent  
20 to Mr. Householder way back when, back in 2003, I believe  
21 it was. We have the old manuals that Mr. Murphy Campbell  
22 put together. I do not believe there was an updated  
23 manual after that.

24 Q. Is there anything in the manual specific to main  
25 extension agreements?



1 A. Not that I'm aware of.

2 Q. Did Far West Water & Sewer ever discipline  
3 Mark Kaveney for any violation of company policy?

4 A. We parted ways by mutual agreement with the --  
5 basically because of that.

6 Q. Did you consider that a disciplinary action?

7 A. I informed him that I was extremely dissatisfied  
8 with the way he was handling things, and his reaction was  
9 that, well, I better go. And I outlined various things  
10 that I was upset about.

11 Q. And that occurred in late 2006?

12 A. It had been ongoing throughout 2006 to the point  
13 that I did not think that we could rectify the situation.

14 Q. Did Mr. Kaveney ever receive any written  
15 reprimand from Far West Water & Sewer related to his job  
16 performance?

17 A. No.

18 Q. Can you explain to me why if you were so  
19 dissatisfied with his performance there was nothing in the  
20 way of a written reprimand to go in the file?

21 A. I don't have a policy of doing written  
22 reprimands. Other people do; I do not.

23 Q. On page 13, line 16 through 18 of his deposition  
24 Mr. Kaveney stated as follows: "My position with Far West  
25 Water & Sewer was that of the old-school way, if you

1 would, where you had a general superintendent that  
2 orchestrated the entire show."

3 I mean, do you agree that essentially Mr. Kaveney  
4 had orchestrated, in his own words, the entire show?

5 A. I will say that he was old school and sort of a  
6 cowboy, one of my reasons for having such disagreements  
7 with him.

8 Q. Would you agree that he had substantial autonomy  
9 within the realm of his job responsibilities?

10 A. He had some autonomy, but he also had to report  
11 to Mr. Thomas. Mr. Thomas got a copy of the memo that  
12 said there was no capacity, and Mr. Thomas never approved  
13 the hooking up of the Spartan Homes at Sierra Ridge and  
14 cannot figure out why it wasn't done.

15 Now, if you did notice, he did have to report to  
16 Mr. Thomas about whether or not he would accept this place  
17 and recommended against it.

18 Q. Accept which?

19 A. The memo in July of 2004 --

20 Q. Okay.

21 A. -- from Mr. Kaveney was reporting to Mr. Thomas  
22 showing that he had to report to Mr. Thomas about what  
23 could be done. Mr. Thomas never approved the acceptance  
24 of Sierra Ridge.

25 Q. And how do you know that Mr. Thomas never

1 approved the acceptance of Sierra Ridge?

2 A. I asked him.

3 Q. And when did you ask him?

4 A. Earlier, and then I asked him again before our  
5 last hearing as to why we ended up with Sierra Ridge with  
6 a memo like this because I thought it was very strange.

7 Q. I'm sorry. You asked Mr. Thomas that question?

8 A. Yes, I did.

9 Q. And that has been in the last year?

10 A. Correct.

11 Q. And where did you see Mr. Thomas?

12 A. I talked to him on the phone. Mr. Thomas still  
13 lives in the area. He has a home in the area.

14 Q. And how many times in the last year have you  
15 spoken to Mr. Thomas?

16 A. Two or three times.

17 Q. And were each of those times with reference to  
18 this case?

19 A. No.

20 Q. That was a single time?

21 A. I believe that I have talked to Mr. Thomas over  
22 the years. You know, especially after Mr. Kaveney's  
23 testimony I asked him at least twice about the testimony  
24 that maybe Mr. Thomas had approved it. He could not  
25 remember.

1           Q.     Mr. Thomas did not remember whether he had  
2 approved the acceptance?

3           A.     I'm sorry. I misspoke.

4                     It was my understanding in Mr. Kaveney's  
5 deposition that he said it was probably approved or  
6 something that Mr. Thomas came up with. And I wanted to  
7 find out if Mr. Thomas had ever worked any special favors  
8 that Mr. Kaveney talked about, and he said he would never  
9 do a favor like that.

10          Q.     Mr. Thomas said that?

11          A.     Mr. Thomas said he would not have done that.

12          Q.     Now, what are we talking about, when you say  
13 "acceptance"? Let's break this down.

14          A.     He would not have accepted Sierra Ridge for sewer  
15 service knowing of the problems of denitrification over  
16 there at Palm Shadows, and especially in light of the  
17 memorandum that went from Mr. Kaveney to Mr. Thomas.

18          Q.     And did you know that information about  
19 Mr. Thomas at the time you filed your prefiled testimony  
20 in this case?

21          A.     I don't know.

22          Q.     Well, did you talk to Mr. Thomas since you filed  
23 your prefiled testimony in this case?

24          A.     I don't remember exactly the dates.

25          Q.     Your prefiled testimony is dated November the

1 20th, 2009.

2 So less than two months ago; correct?

3 A. Correct.

4 Q. Have you talked to Mr. Thomas in the last  
5 two months?

6 A. I talked to Mr. Thomas just before our last  
7 hearing. It was in December, correct?

8 Q. December, correct.

9 A. I talked to him before we started that hearing.

10 Q. So you don't recall whether you talked to him  
11 before or after you filed your testimony?

12 A. Now that you reminded me of the date of this, it  
13 would have been after the prefiled testimony and before  
14 the last hearing.

15 Q. And why did you talk to him after you prefiled  
16 your testimony instead of before you prefiled your  
17 testimony?

18 A. Because I had reviewed Mr. Kaveney's deposition  
19 again.

20 Q. When did you review -- did you review  
21 Mr. Kaveney's deposition after you prefiled your  
22 testimony?

23 A. Yeah, was preparing for the hearings last time.

24 Q. Okay. But the testimony of Mr. Kaveney's  
25 deposition transcript is an attachment to your testimony;

1 correct?

2 A. That is correct.

3 Q. Did you read that deposition transcript before  
4 you attached it to your testimony and filed that with the  
5 Commission?

6 A. Quite frankly I was there. I thought I  
7 remembered everything, and I went through it again to see  
8 if there was anything else that I should know.

9 Q. But you didn't go through it again until after  
10 your testimony had been filed with the Commission?

11 A. Correct.

12 Q. So I'm just trying -- it's getting late in the  
13 day. I'm sorry for being a little bit repetitive. I'm  
14 trying to understand the sequence.

15 You attended Mr. Kaveney's deposition in November  
16 of 2008?

17 A. Correct.

18 Q. You did not read the transcript from that  
19 deposition until after your testimony was prefiled with  
20 the Commission on November 20th, 2009?

21 A. I believe that I read the deposition when it came  
22 to me, and then I read it again when I was preparing for  
23 the last hearing.

24 But you asked me, did I read it just before I  
25 attached it, no, because I thought I remembered it.

1       Q.     Now, you testified that Mr. Thomas would not have  
2 approved or did not approve the Sierra Ridge subdivision  
3 for acceptance to the sewer system?

4       A.     That's what he told me.

5       Q.     Would he have been aware that there was 62 homes  
6 connected to the sewer system in Sierra Ridge?

7       A.     I don't know how much time he spent on the field  
8 or in that direction.

9       Q.     So that could have been kept secret from  
10 Mr. Thomas by Mr. Kaveney?

11      A.     Not a secret. Mr. Thomas's office was at the  
12 same office I'm in right now. The office for building  
13 hookups and the rest is over at 44th Street.

14      Q.     When did you open your 44th Street office?

15      A.     When APS left there several years ago.

16      Q.     Do you remember when that was?

17      A.     I believe in 2005, 2004, somewhere in there. It  
18 was either early 2005, but all the dates seem to meld  
19 together to me. I know it was after 2003 because  
20 Dusty Thomas was the one that suggested that we break up  
21 and put Far West Water & Sewer over there.

22      Q.     In his deposition Mr. Kaveney testified that he  
23 reported to Dusty Thomas, the director of operations, for  
24 Far West Water & Sewer.

25             Do you agree with that?

1 A. Yes.

2 Q. He also testified that Dusty Thomas reported to  
3 the board of Far West Water & Sewer.

4 Do you agree with that?

5 A. Yes.

6 Q. Now, did Mr. Thomas also work for a company  
7 called H & S Developers?

8 A. Yes, he did.

9 Q. Was he an employee of that company?

10 A. He was the director of operations for H & S  
11 Developers, also.

12 Q. What does H & S Developers do?

13 A. Develops land.

14 Q. How much time did he spend working for H & S  
15 Developers versus Far West Water & Sewer?

16 A. I couldn't give you a breakdown between the two.

17 Q. Would you -- how many customers does Far West  
18 Water & Sewer have?

19 A. Far West Water & Sewer has over 17,000 water  
20 customers and close to 8,000 sewer customers. It has 9600  
21 customers that are on septic tanks.

22 Q. And would you agree that as director of  
23 operations for a utility company of that size, that that  
24 would have kept Mr. Thomas very busy?

25 A. Depends on how competent your staff is on the



1 outside.

2 Q And apparently you believe that he had sufficient  
3 time to be able to also operate as director of operations  
4 for H & S Developers?

5 A I believe so.

6 Q Now, did H & S Developers enter into main  
7 extension agreements with Far West Water & Sewer?

8 A Yes, it did.

9 Q And with respect to negotiating those agreements,  
10 would Mr. Thomas have negotiated both sides of those  
11 agreements?

12 A No.

13 Q How would that have been handled?

14 A For agreements from about April of 2006, those  
15 agreements were done about -- underneath the new  
16 contracts. Before that the Far West Water & Sewer and  
17 H & S, I believe Kaveney did most of those. Before that  
18 Mr. Weidman did. I'm not sure if Mr. Thomas did any.

19 And as far as negotiations, the early ones didn't  
20 require any negotiations; the legal ones did.

21 Q Were you dissatisfied with Mr. Thomas's  
22 performance with Far West Water & Sewer?

23 A I was realistically upset that while we were  
24 involved in heavy litigation, we were not informed of the  
25 extent of the problems that we had with denitrification of

1 the various plants or that plant were being constructed  
2 without prior ADEQ approval.

3 Q Was Mr. Thomas terminated?

4 A No, he retired. Mutual agreement again.

5 Q Did you ever take any kind of formal disciplinary  
6 action against Mr. Thomas while he was an employee?

7 A No. We were doing regime change bringing in  
8 Coriolis, bringing in engineers, managers that know what  
9 they were doing.

10 Q Does that comment suggest that Mr. Thomas did not  
11 know what he was doing?

12 A No. It was just, if you take a look at it, we  
13 needed more professional help. The day of being a small  
14 company had passed.

15 Q Could the problem have been related to the fact  
16 that Mr. Thomas was split between being director of  
17 operations for a large utility company and a director of  
18 operations for a development company?

19 A No, I don't believe so. He has handled big  
20 operations before. It's just that we wanted to go in a  
21 different direction.

22 Q Did he also retire from H & S Developers at that  
23 time?

24 A Yes, he did.

25 Q Does Mr. Thomas have any ownership interest in

1 H & S Developers?

2 A. No.

3 Q. Is H & S Developers an affiliate of Far West  
4 Water & Sewer as defined in Arizona Administrative Code  
5 R-14-2-801?

6 A. And what is that definition?

7 Q. It's -- that's the sections that deal with public  
8 utility holding companies.

9 A. And what is the definition?

10 Q. That the companies either are affiliates or share  
11 common control or ownership.

12 A. Well, that is a good question. We have  
13 stockholders in H & S that own 31 percent of H & S that  
14 own 100 percent of Far West. The other 69 percent of  
15 H & S is not a person that owns anything in Far West but  
16 it is a family member.

17 Q. Do you know whether Far West Water & Sewer is a  
18 Class A utility?

19 A. I don't know what is Class A, Class B or what it  
20 is.

21 Q. Under -- are you familiar with the Arizona  
22 Corporation Commission's rules that classify utilities  
23 based on gross revenues?

24 A. Correct.

25 Q. And do you know what those classifications are?

1       A.     No. I refer that to counsel.

2       Q.     According to my recollection, Class A utilities  
3 have jurisdictional revenues with respect to water and  
4 sewer companies of five million or more a year.

5             Does that make -- under that definition would  
6 that make Far West Water & Sewer a Class A?

7       A.     That is correct.

8       Q.     And that would be -- so would the water and sewer  
9 division each have revenues that exceed \$5 million a year?

10      A.     No.

11      Q.     That is a combined no?

12      A.     That's correct.

13      Q.     Does either company have revenues that exceed --  
14 I'm sorry -- does either division have revenues that  
15 exceed \$5 million a year?

16      A.     I believe the water does.

17      Q.     And if that is the case, that would make the  
18 water company a Class A?

19      A.     Under your definition, yes.

20      Q.     And are you aware that Class A utility companies  
21 are required to make filings regarding transactions with  
22 affiliates under the Commission's affiliated interest  
23 rules?

24      A.     I know we report all of our transactions with  
25 affiliates. And we separate anything that has to do with

1 myself, my wife, my sister-in-law, and H & S Developers.

2 Q Is that a report that is filed with the Arizona  
3 Corporation Commission?

4 A Correct.

5 Q Is Far West Water & Sewer connected to or  
6 affiliated with any other developers in Yuma?

7 A You mean, does any other developer own an  
8 interest in it?

9 Q Well, that would be a starting point. Let's  
10 start there.

11 A No.

12 Q Okay. Does -- I'm familiar with the gentleman by  
13 name of Bruce Jacobson.

14 Is that name familiar to you?

15 A Yes.

16 Q Is Mr. Jacobson affiliated in any way with Far  
17 West Water & Sewer?

18 A No.

19 Q Is -- okay.

20 Is Mr. Jacobson on the board of directors of Far  
21 West Water & Sewer?

22 A No.

23 Q Okay. Has he ever been on the board of  
24 directors?

25 A No.

1       Q.     And I'm sorry. I may have asked this question  
2     and you may have answered it; I just don't remember.

3             Do you have an estimate of how much time  
4     Mr. Thomas spent with Far West Water & Sewer as compared  
5     to H & S Developers?

6       A.     I don't remember my answer. No, I don't really  
7     know.

8       Q.     Could it be 50/50?

9       A.     It could have been.

10      Q.     Could it have been?

11      A.     It could have been. I don't know how much time  
12     he spent. I know that Mr. Thomas spent an awful amount of  
13     time in the field looking at operations.

14      Q.     For which company?

15      A.     I know he spent a lot of time in the field. I  
16     saw him driving around all the time. He would be in the  
17     office early in the morning and then late in the  
18     afternoon.

19      Q.     If he spent a lot of time in the field, would you  
20     agree that he would likely have run across the Sierra  
21     Ridge subdivision?

22      A.     I don't know. Sierra Ridge subdivision, you have  
23     to go down the frontage road, and I believe it's 12E to  
24     get to it. Most of the time you are going to your various  
25     plants, and that is not in a direct line of sight for your

1 plants.

2 Q Can you see the Sierra Ridge subdivision from the  
3 freeway?

4 A Don't believe so. You can see their sign. There  
5 is an empty lot there from the freeway.

6 And -- there is no question. I'm getting this.

7 MR. BLACK: My hands are -- I'm not --

8 THE WITNESS: I bored your client. He left.

9 Q (BY MR. CROCKETT) Yeah, I noticed that. I think  
10 he went to get Kate some dinner.

11 At page 20, lines 5 through 11 of his deposition,  
12 Mr. Kaveney testifies that at one time Far West Water &  
13 Sewer had approximately 35 employees and that 29 of those  
14 employees reported to Mr. Kaveney.

15 Do you have any reason to dispute Mr. Kaveney's  
16 testimony that as many as 29 employees reported to him?

17 A No. I'm surprised it was only 29 of the group.

18 Q During the time that Mr. Kaveney was employed at  
19 Far West Water & Sewer -- strike that.

20 You have testified, have you not, or have you  
21 agreed with me that Mr. Kaveney met with developers as  
22 part of his job responsibilities?

23 A I agreed with that. I just don't know when it  
24 started.

25 Q And Mr. Thomas also met with developers?

1 A. That is my understanding.

2 Q. In 2004 and 2005 would there have been any other  
3 employee of Far West Water & Sewer that would have met  
4 with developers besides Mr. Kaveney and Mr. Thomas?

5 A. Gary Sims may have and Lynn Whitman may have.

6 Q. Mr. Capestro, do you know what a capacity  
7 assurance form is?

8 A. I've seen them.

9 Q. Do you know what the purpose of those forms is?

10 A. That is to assure the State ADEQ and the County  
11 that we have the capacity for the development on whatever  
12 the capacity is, whether or not it's water or sewer.

13 Q. Would you agree with me that developers which  
14 receive capacity assurance forms from a utility company  
15 rely upon those documents in making development decisions?

16 A. I don't know.

17 Q. Would you agree with me that governmental  
18 agencies that receive capacity assurance forms signed by  
19 utilities rely upon those forms in making permitting  
20 decisions?

21 A. I believe that the agencies do, yes.

22 Q. At page 22 line 8 Mr. Kaveney testified that he  
23 signed capacity assurance forms on behalf of Far West  
24 Water & Sewer.

25 Do you dispute that Mr. Kaveney signed capacity



1 assurance forms on behalf of Far West Water & Sewer?

2 A. No, I know he did sometime after Dusty Thomas  
3 stopped signing them.

4 Q. Did he have authority on behalf of the company to  
5 sign those forms?

6 A. I did not give him direct authority nor did the  
7 board of directors, but I assume Dusty Thomas did.

8 Q. And if Mr. Thomas gave Mr. Kaveney authority to  
9 sign capacity assurance forms, would you agree that he had  
10 all the corporate authority he needed to sign capacity  
11 assurance forms?

12 A. Mr. Thomas had that authority, so I assume as a  
13 delegated authority he did.

14 Q. Did you receive or review any of the capacity  
15 assurance forms that was prepared by Mr. Kaveney as the  
16 company's attorney?

17 A. Before this case?

18 Q. Yes, let me strike that and ask that again.

19 During 2004 and 2005 did you review any capacity  
20 assurance forms that were prepared by Mr. Kaveney and  
21 signed on behalf of Far West Water & Sewer?

22 A. No, sir.

23 Q. Same question with regard to the Mr. Thomas.

24 A. Same answer.

25 Q. At page 22, lines 9 through 15 of his deposition,

1 Mr. Kaveney testified that he prepared and signed water  
2 service agreements and sewer service agreements on behalf  
3 of Far West Water & Sewer.

4 Do you dispute that Mr. Kaveney prepared and  
5 signed water and sewer service agreements on behalf of Far  
6 West Water & Sewer?

7 A. No, I do not.

8 Q. Do you know what water and sewer service  
9 agreements are?

10 A. Yes, I do.

11 Q. What is the purpose for those documents?

12 A. The purpose for the documents, it gives you legal  
13 rights, and it also gives notification to the State as far  
14 as the water is concerned of what type of infrastructure  
15 you have.

16 The appropriate legal documents gives you  
17 easement to go over there to take care of infrastructure.  
18 Once it's turned over to you it provides for a warranty  
19 period, and it provides for a payback to the developer  
20 based upon the number of homes there and what the income  
21 is of those facilities.

22 Q. Let me stop you there. That sounds like you are  
23 describing a main extension agreement.

24 A. I thought that was what you asked for.

25 Q. No, a water service agreement and a sewer service

1 agreement.

2 A. I never looked into those. I don't what they  
3 are.

4 Q. What are they?

5 A. They are forms provided by the State of Arizona  
6 that have to be filled out to show that there is an  
7 agreement for you to provide water to a certain area,  
8 subdivision, hotel, or whatever it is.

9 Q. And do you know why those forms are required by  
10 the State?

11 A. The State wants to know if there is adequate  
12 water.

13 Q. Would you agree with me that once those water and  
14 sewer service agreements are signed by a utility company,  
15 that they are relied upon by the state and local  
16 regulators in making permitting decisions?

17 A. Is that a different form than you were talking  
18 about earlier?

19 Q. Yes. Before I was talking about capacity  
20 assurance forms. Now I'm talking about water and sewer  
21 service agreements.

22 A. That the company would actually service those  
23 facilities?

24 Q. Okay. Do you know the difference between a  
25 capacity assurance letter and a water and sewer service

1 agreement?

2 A. I do. It took me a while to learn.

3 Q. And what is the difference?

4 A. Well, one just says we have the capacity to take  
5 care of them. The other one says we will take care of  
6 them.

7 Q. Is a capacity assurance form signed by a  
8 developer?

9 A. I do not believe so.

10 Q. Is a water service agreement or sewer service  
11 agreement sign by a developer?

12 A. I don't believe so.

13 Q. Would you agree with me that developers rely upon  
14 executed water and sewer service agreements that they  
15 received from utility companies?

16 A. I don't know the answer to that because as I  
17 said, a lot of cowboys.

18 Q. A lot of what?

19 A. Cowboys.

20 Q. Okay. Does H & S Developers receive water and  
21 sewer service agreements from Far West Water & Sewer?

22 A. It does.

23 Q. And do you do work for H & S Developers?

24 A. Yes.

25 Q. And do you know whether or not H & S Developers

1 relies upon those documents that it receives from Far West  
2 Water & Sewer?

3 A. Yes, it does, but it has intimate knowledge of  
4 what the facilities are.

5 Q. And so do you have to have intimate knowledge  
6 about what the facilities are in order to be able to rely  
7 upon one of those agreements?

8 A. No. But your question is what do developers do,  
9 and I have become aware of the fact that there is a bunch  
10 of cowboys on both sides over there. That is what I have  
11 been trying to stop. I have been trying to make sure that  
12 everything is done ahead of time and we know we have the  
13 capacity, and we refer it out to engineers to find out if  
14 we have the capacity.

15 We no longer write in the numbers. We have the  
16 engineer for the developer tell us exactly what that  
17 facility -- what that area is going to use. And sometimes  
18 they are very upset with us because some of them, the  
19 gallonages that you have here comes at a higher risk, and  
20 then we will go back and take a look at it.

21 Q. Would you agree with me the responsibility to  
22 make sure that those capacity assurance forms are accurate  
23 falls primarily upon the shoulders of the utility company?

24 A. It does, and as I said before, the company  
25 stubbed its toe. And I hope some day the customers, the

1 ACC and ADEQ recognize the strides that this company is  
2 trying to make to improve.

3 Q Well, it sounds like the company needed to make  
4 strides to improve?

5 A Oh, boy, it sure did.

6 Q Would you agree with me that developers would not  
7 have the knowledge necessary to evaluate whether a  
8 capacity assurance form is filled out correctly?

9 A I agree with that, but some of the developers  
10 there, they know more than I do.

11 Q Which ones?

12 A Mr. Jacobson, Mr. Spencer.

13 Q So you are saying that Mr. Jacobson knows more  
14 about Far West Water & Sewer capacity than you do?

15 A He engineered most of the plants.

16 Q And how does he know how many homes are connected  
17 to any of those plants in total?

18 A Because a lot of the homes, especially for Palm  
19 Shadows, are his.

20 Q But he doesn't develop all the homes that feed  
21 into Palm Shadows, does he?

22 A No, but he was the one that put together the  
23 expansion of the CC&N for those homes.

24 Q So would you then let Mr. Jacobson fill out a  
25 capacity assurance form for one of his developments?

1       A.     Your question was, why would a developer know  
2     what your capacity is, and I'm saying there are some  
3     developers out there that have intimate knowledge of what  
4     is happening out there.

5       Q.     Is Mr. Householder one of those developers?

6       A.     I don't know about Mr. Householder's background  
7     except for his testimony.

8       Q.     How would Mr. Householder have intimate knowledge  
9     about the capacity of Far West Water & Sewer wastewater  
10    treatment facilities?

11      A.     I don't know.

12      Q.     Have you provided access to the company's records  
13    to Mr. Householder in that regard?

14      A.     I don't believe he has ever asked.

15      Q.     Is it his responsibility to independently verify  
16    the capacity of the excess assurance form?

17      A.     Well, you are taking it out of context of what  
18    was happening. If he didn't -- if he had not received the  
19    letters before, no.

20      Q.     Which letters?

21      A.     The letter that stated that he could only -- the  
22    company could only provide service once ADEQ approved the  
23    capacity of the Palm Shadows plant and also the ability of  
24    that plant to take care of effluent.

25      Q.     Which letter is that?

1 A. I believe it's the July '04.

2 Q. So let's look at that letter.

3 Now, the --

4 ALJ MARTIN: Where did you find it, Mr. Crockett?

5 MR. CROCKETT: Your Honor, I'm looking at

6 Exhibit 24 to the deposition transcript of Mr. Kaveney.

7 ALJ MARTIN: Thank you.

8 THE WITNESS: No. 24 at the very end?

9 Q. (BY MR. CROCKETT) Yes.

10 A. Okay.

11 Q. Now, let me ask you, you mentioned that there are  
12 a lot of cowboys in Yuma on both sides.

13 Is Mr. Householder a cowboy in your opinion?

14 A. I don't know him.

15 ALJ MARTIN: Mr. Crockett, Mr. Capestro, could I  
16 ask if we could get just sort of a feel for what in your  
17 mind, when you say there are a lot of cowboys down there,  
18 what you mean, what that term implies to you.

19 Q. (BY MR. CROCKETT) That is a fair question, Your  
20 Honor.

21 Mr. Capestro, when you use the word cowboy to  
22 refer to someone, what kind of conduct are you describing?

23 A. I'm talking about the ways that people were doing  
24 things in the past, developers and utilities and people  
25 that worked for various companies.



1           The developers -- and I have run into them, and I  
2 have had them get mad at me saying, listen, I need to find  
3 out if I can get those approved, just give me an adequacy  
4 letter. We know you don't have facilities right now, and  
5 I refuse to do it.

6           Or I put into the provision saying we will have  
7 the capacity provided, you know, this plant is finished.  
8 And they say, well, this is not the way we have always  
9 done it. The way we have done it is we get the  
10 subdivision up and we know we are not going to do anything  
11 for a while.

12           Or why don't you give us this letter now so we  
13 can get it in and just before we start we can do line  
14 extensions and the like, and I am saying that is not how  
15 we will do it.

16           There was testimony before in our criminal case  
17 from several people that people would go into confined  
18 spaces all the time without any respirators and without  
19 anything; this was done in Santa Barbara. It's done all  
20 over California. It's done in Arizona. I'm saying, to me  
21 this is somebody that they know the rules but let's fudge  
22 this a little bit.

23           And that is a cowboy to me. They strap it on and  
24 just keep on going. And I think the developers were that  
25 way and the companies were that way. I have seen

1 developers out there with their employees without hardhats  
2 on or not strapped into their vehicles and the like, not  
3 following OSHA rules. Thing have to change.

4 ALJ MARTIN: So what you term a cowboy is more  
5 like a kind of rogue mentality, I guess, almost. In  
6 Mr. Kaveney's deposition he kept referred to as the  
7 good-old-boy thing.

8 THE WITNESS: Good-old-boy thing, do things for  
9 each other.

10 I had a representative of ADEQ ask me why we wait  
11 to build until we had the permission of ADEQ, and he was  
12 an inspector. And I said because the consent order says  
13 we can't build. He said nobody would be upset with you;  
14 everyone builds. Well, I don't want to be subject to a  
15 \$3,000-a-day fine because you think your bosses won't be  
16 upset with me. I mean, it's permissive.

17 That is all I want to say.

18 ALJ MARTIN: Okay. I just wanted to clarify  
19 that.

20 THE WITNESS: That is all I'm trying to say.

21 ALJ MARTIN: I just wanted to clarify that. The  
22 term was being thrown around.

23 THE WITNESS: Let's forget about the rules for  
24 right now and let's move ahead. By the time this gets in  
25 everything will be fine.

1 ALJ MARTIN: Thank you, Mr. Crockett.

2 Q. (BY MR. CROCKETT) So in your mind a cowboy is  
3 someone that breaks the law?

4 A. I don't know if it's the law or rule or shortcut,  
5 but it's bending the rules at least.

6 Q. Now, you testified, did you not, that you don't  
7 know whether or not Mr. Householder is a cowboy within  
8 your definition?

9 A. No, I really don't.

10 Q. Was Mr. Kaveney a cowboy in your definition?

11 A. Just by the fact that he said he did special  
12 favors for Mr. Householder, whether Mr. Householder  
13 recognized them as favors or not, that is a cowboy. That  
14 is a rule.

15 Q. Do you know whether he did, in fact, do special  
16 favors for Mr. Householder?

17 A. Well, there is something unusual about having a  
18 memo saying there is no capacity and a letter saying that  
19 he needed ADEQ approval and then without ADEQ approval  
20 turns around and said we have capacity. If that is not a  
21 special favor --

22 I don't know why he would do it because each  
23 sewer hookup we have loses money. So it wouldn't have  
24 been an advantage to Far West Water & Sewer. It would  
25 have been much better for us to have something with septic

1 tanks and just water alone. So I don't understand it.

2 Q Why do you say each -- why do you say each sewer  
3 hookup you have loses money?

4 A It costs us so much money to treat effluent, and  
5 with the rate we have at the present time, the Far West --  
6 the sewer division loses money even without the  
7 improvements.

8 Q Was Mr. Thomas a cowboy, using your definition?

9 A Mr. Thomas was old school, but he -- his  
10 background was much more working on government contracts  
11 or for the government himself. So to the extent that as a  
12 government employee he had to follow the rules, I think he  
13 was less of a broken cowboy mentality.

14 But I don't -- I know that one plant was built  
15 while they were waiting for a permit for Del Oro to come  
16 in. I know the inspectors from ADEQ were there knowing it  
17 was being built and didn't stop it. And once it was  
18 completed everything went to heck in a hand basket. So I  
19 don't know if this is what ADEQ did or if they were all a  
20 little on the roadside. I have no clue. I'm new to this.

21 Q You used the terminology old school.

22 In your mind, is old school synonymous with  
23 cowboy?

24 A No. No. A cowboy is a little bit more rogue.

25 ALJ MARTIN: Gradations of cowboy apparently.

1 THE WITNESS: That's correct. Whether you are a  
2 bareback rider or whether you're wrestling bulls.

3 Q. (BY MR. CROCKETT) As you use old school, do you  
4 intend that to have a negative connotation?

5 A. No. It's the fact that as I understand it the  
6 State used to allow people to put in water and sewer  
7 facilities prior to getting approval, and that is the way  
8 things were done. And ADEQ looked at it the same way.

9 Q. And if that is the way things were done and that  
10 was accepted practice and someone did -- and followed that  
11 accepted practice, does that make that person a cowboy?

12 A. Well, I don't know. As I said, it's not allowed  
13 now.

14 Q. Now in 2010?

15 A. Correct.

16 Q. But we are talking about things that happened in  
17 2004, 2005.

18 A. And my impression was everything was done very  
19 loosely.

20 Q. But you have no firsthand knowledge, do you,  
21 because you weren't involved in the day-to-day operations  
22 of the company?

23 A. I have knowledge of looking at the documents that  
24 were filed with ADEQ trying to get permits and having the  
25 plant finished and asking for an emergency waiver because

1 it was finished and still no permits there for the Del Oro  
2 plant.

3 Q With regard to Spartan Homes, though, you already  
4 testified that you had nothing to do with any of the  
5 documents, negotiations, discussions involving his  
6 development in 2004 and 2005; correct?

7 A I thought your question was, overall as to  
8 whether or not I had any knowledge of them working things  
9 in old school or cowboy back in 2004 or 2005.

10 Q Well, let me bring it down to Spartan.

11 Do you have -- I mean, you don't have any  
12 independent knowledge of any cowboy conduct or old school  
13 conduct that occurred back in 2004, 2005; is that correct?

14 A It had to have been when Mr. Kaveney and Far West  
15 had not met the conditions of getting ADEQ approval for  
16 the disposal of the effluent yet. That has to be somebody  
17 that is bending the rules.

18 Q I don't understand that. Well, I still don't  
19 understand your testimony.

20 Let's look at this Exhibit 24 to the Kaveney  
21 deposition.

22 Do you have that in front of you?

23 A Yes.

24 Q Would you read the body of that letter.

25 A Dear Mr. Householder, Far West Water & Sewer will

1 provide sewer service to the Sierra Ridge proposed  
2 development and enter into a sewer service agreement on  
3 the following requirements -- after the following  
4 requirements have been met: Far West Water & Sewer has  
5 assured that Palm Shadows wastewater treatment plant has  
6 adequate capacity for the proposed development and Far  
7 West Water & Sewer has assured that Palm Shadows  
8 wastewater treatment plant has adequate and ADEQ-approved  
9 means of wastewater effluent disposal.

10 Q So if you are Mr. Householder and you receive  
11 that letter, what in that letter tells you that -- I mean,  
12 let me strike that.

13 What should Mr. Householder have concluded when  
14 he read this letter?

15 A That ADEQ needed to approve what they were going  
16 to do with the waste once it's been treated.

17 Q Okay. And if Mr. Kaveney had subsequently told  
18 Mr. Householder that he had addressed these issues, is it  
19 your testimony that Mr. Householder should not have been  
20 entitled to rely upon that?

21 A I think that something more should have been  
22 done, because basically you have Mr. Householder saying,  
23 well, you didn't have capacity before and what's  
24 happening, and he said don't worry about it.

25 Q So where should Mr. Householder have gone? He is

1 dealing with the general superintendent of the utility  
2 company, a person who had close to 30 employees working  
3 for him. He had apparent authority. He had actual  
4 authority. What should Mr. Householder have done  
5 differently?

6 A. Apparently he had an decent relationship with  
7 Rick Stacks at the County of Yuma. He should have gone to  
8 him.

9 Q. And would Rick Stacks have been able to tell  
10 Mr. Householder that Mr. Kaveney was wrong, that Far West,  
11 in fact, didn't have capacity?

12 A. At that point -- now, he could. At that point  
13 probably he was intimately involved and in contact with  
14 ADEQ all the time.

15 Q. Didn't Mr. Stacks receive copies of the assurance  
16 capacity -- or capacity assurance forms?

17 A. And he is also the one that wrote the notice that  
18 there will not be any sewage facilities available in the  
19 foreseeable future.

20 Q. That is correct.

21 But do you agree that -- do you agree with  
22 Mr. Householder that once sewer capacity was offered to  
23 him, that under the rules he could no longer use  
24 individual on-site septic for his subdivision?

25 A. I don't know that.



1 Q Do you have any reason to dispute the accuracy of  
2 his testimony on that point?

3 A I don't know the answer to that, because the  
4 County and the State had approved septic tanks.

5 Q Okay. But would you agree, based on the  
6 documents that we looked at in this case, that they  
7 approved septic tanks with the requirement that he dry  
8 sewer the subdivision?

9 A And I do know that Mr. Stacks was out at the Palm  
10 Shadows facilities during that time looking at the  
11 problems that we were having. So I don't understand how  
12 it got through.

13 Q Well, Mr. Stacks received these forms, and the  
14 approvals were issued; do you agree?

15 A They were.

16 Q And so here is Mr. Householder who is doing his  
17 first subdivision, and he is going to Far West Water and  
18 saying, what do I need to do? He is going to the County  
19 saying, what do I need to do? He is following their  
20 advice or their requirements that he is given. I'm trying  
21 to understand what you think he should have done  
22 differently here.

23 A And as I said, when you -- you know, we have a  
24 person that said he had a very cold relationship with  
25 Mr. Kaveney and it was frosty and he accepts at face value

1 don't worry about it.

2 Q Well --

3 A I find that very strange.

4 Q Let me stop you there.

5 It's not at face value don't worry about it; it  
6 was backed up with forms that were signed with his name as  
7 the general superintendent of Far West Water & Sewer.

8 A After his memo saying there is no capacity, I  
9 find it very strange.

10 Q Did Mr. Householder ever see the memo that was  
11 written from Mr. Kaveney to Mr. Thomas?

12 A In his timeline he said he was told by  
13 Mr. Kaveney that there was no sewer capacity.

14 Q Did he ever see the memo that you are  
15 referencing?

16 A I don't know.

17 Q His testimony is that he did not see that memo  
18 until discovery in this case.

19 Do you have any reason to dispute that?

20 A I don't know if he saw it. I don't know what  
21 Mr. Kaveney was doing.

22 Q Mr. Kaveney testified in his deposition that  
23 Mr. Householder did not know about the memo or see a copy  
24 of the memo.

25 Do you have any reason to dispute that testimony?

1       A.     No, I don't. I just don't know what was  
2     happening. It was very strange.

3       Q.     So this memo, I feel -- I want to clarify this  
4     with you. I feel like you are trying to create something  
5     sinister here that this memo came up in July of 2004 at  
6     the same time this letter came to Mr. Householder.

7     Are you implying that Mr. Householder knew about  
8     the memo when he received this letter?

9       A.     No. I just say they are tied together with his  
10    being told by Mr. Kaveney that there is no capacity and  
11    then this letter saying we will provide it in the future  
12    and that there is -- we have ADEQ approval. You tie it  
13    all together, I don't know what happened.

14            And then I have Mr. Thomas that says he never  
15    approved this. So I don't know what happened.

16       Q.     Well, there is nothing in the record here other  
17    than your testimony today, which is hearsay testimony,  
18    that Mr. Thomas never approved this; correct?

19       A.     That is correct.

20       Q.     You could have offered Mr. Thomas as a witness in  
21    this case, could you not?

22       A.     We could.

23       Q.     And so other than your testimony here today, is  
24    there anything else to support this statement that  
25    Mr. Thomas did not approve this development?

1 A. No. The only signatures that you see are  
2 Mr. Kaveney.

3 Q. And your testimony is that Mr. Householder should  
4 not have relied on statements made by representatives of  
5 the company; is that correct?

6 A. I think Mr. Householder was rolling the dice.

7 Q. And so we are -- you are here today in the  
8 capacity as a representative of the company; is that  
9 correct?

10 A. That is correct.

11 Q. And how is it that we can rely on statements you  
12 make today in this proceeding?

13 A. I guess you will have to make that decision  
14 yourself.

15 Q. Well, where would we go to corroborate the  
16 statements you make in this proceeding? Who is the  
17 higher --

18 MR. BLACK: Your Honor, Your Honor, objection. I  
19 think the record clearly shows that Mr. Kaveney -- clearly  
20 shows in his deposition that he lied about certain things,  
21 that he filled out forms that he shouldn't have filled  
22 out, and to suggest that Mr. Capestro is on the part of  
23 Mr. Kaveney based on his testimony in front of the  
24 Corporation Commission I think is wrong.

25 MR. CROCKETT: Your Honor, if I can respond

1 briefly.

2 The Kaveney deposition does not demonstrate that  
3 he lied about documents.

4 ALJ MARTIN: Okay. I take your objection, but  
5 I'm taking it on a different point because I sort of  
6 disagree with the characterization the Mr. Crockett was  
7 asking and saying. But I'm taking it on the basis of  
8 argumentative.

9 Tone it down and figure out a different way to  
10 ask the question, please.

11 MR. BLACK: Well, then, we will be here tomorrow  
12 for a long time because I will be on redirect on this  
13 issue.

14 Q (BY MR. CROCKETT) Mr. Capestro, back to  
15 Exhibit 24, to the Kaveney deposition.

16 This letter tells Mr. Householder that Far West  
17 Water & Sewer will provide service in the future after  
18 certain requirements are met; correct?

19 A Correct.

20 Q And subsequent to this letter Mr. Kaveney  
21 contacted Mr. Householder and told Mr. Householder that  
22 the company had addressed its capacity issues and was in a  
23 position to extend sewer service to his Sierra Ridge  
24 development.

25 Would you agree?

1 A. No.

2 Q. What about that is not accurate?

3 A. I know what Mr. Householder's testimony is. I  
4 also have the deposition of Mr. Kaveney, which states that  
5 things had not changed, but he was trying to do a favor  
6 for Mr. Householder. I was not there. I don't know what  
7 Mr. Kaveney said or Mr. Householder said.

8 Q. So you can neither confirm nor deny that; is that  
9 right?

10 A. I can neither confirm nor deny. You took the  
11 deposition of Mr. Kaveney where he said he was doing it  
12 just to do a favor and the rest of that, and he said he  
13 did this letter to protect himself.

14 Q. Okay. Let's talk about the favor for a minute.  
15 What exactly was the favor that was done for  
16 Mr. Householder? Mr. Householder has testified today that  
17 he had his documents -- he had his approvals to proceed in  
18 this subdivision with septic; is that correct?

19 A. That's what he said.

20 Q. And you dispute that? You dispute that he had  
21 approval to proceed with septic?

22 A. I don't know. I can just read the documents that  
23 certain things had to be done with the City. I don't know  
24 what the City said or anything else. The only thing I can  
25 do is look at documents.

1           The only thing that I know is that for 113 units  
2 he did not have to put in septic tanks that according to  
3 Mr. Householder's testimony is 1800 to 2400 apiece and  
4 according to Mr. Galindo it's 5,000 to 8,000 apiece. That  
5 is quite a savings.

6       Q     And has it wound up being quite a savings for  
7 Mr. Householder the way things have worked out?

8       A     No, but you asked me what favor did Mr. Kaveney  
9 think he was doing. That is the only thing I can think  
10 of. It sure didn't help Far West.

11       Q     And it sure didn't help Spartan Homes, did it?

12       A     I don't know how much it would really cost them  
13 per household. It may have taken all the profit. I don't  
14 have a clue.

15       Q     Did -- is it your testimony that Mr. Kaveney did  
16 Mr. Householder a favor by giving him a capacity assurance  
17 form?

18       A     It's my testimony that Mr. Kaveney said he was  
19 doing him a favor.

20       Q     By?

21       A     By giving him these assurance letters.

22       Q     And where is that in his deposition?

23       A     I don't remember.

24       Q     Would you be able to find specifically what you  
25 are referring to if we had a break?

1 A. I could look at it overnight.

2 Q. Okay. And we can address that again tomorrow?

3 A. Sure.

4 Q. Now, Mr. Capestro, while we are still on the  
5 Kaveney deposition, if would you turn to Exhibit 7 to  
6 Mr. Kaveney's deposition.

7 Are you there?

8 A. Yes.

9 Q. Is there a certification that is associated with  
10 completing this capacity assurance form?

11 A. Are you talking about the paragraph 6?

12 Q. I am.

13 A. Is there a question?

14 Q. I'm asking, if there is a verification that is  
15 associated with the capacity assurance form.

16 A. There is an affirmation.

17 Q. Would you read that affirmation in Box 6?

18 A. "I, Mark Kaveney, affirm that the additional  
19 volume of" --

20 Q. Let me stop you there. I will have you stop with  
21 No. 6 -- I mean, start with No. 6 at the beginning.

22 A. "Capacity assurance to be completed by  
23 owner/operator identified in item 2 above."

24 Q. And the owner/operator identified in item 2 is  
25 Palm Shadows wastewater treatment plant?



1 A. No. It's --

2 Q. I'm sorry.

3 A. It's Mark Kaveney, general superintendent, Far  
4 West Water & Sewer.

5 Q. Okay. Okay. So this is an affirmation that is  
6 asked of by the utility company; correct?

7 A. That's correct.

8 Q. Okay. Would you continue.

9 A. "I, Mark Kaveney, affirm that the additional  
10 volume of sewage delivered to this facility by the sewer  
11 collection system serving the proposed subdivision will  
12 not cause any flow or effluent quality limits of the  
13 facility's individual permit to be exceeded. I am aware  
14 that there are significant penalties for submitting false  
15 information, including permit revocation, as well as a  
16 possibility of fine and imprisonment for knowing  
17 violations."

18 Q. Is it your testimony that Mr. Kaveney falsified  
19 this capacity assurance form for Mr. Householder?

20 A. I don't know if he -- if he falsified it in a  
21 strict sense. This one talks about collection system, the  
22 facility's permit.

23 The permit allowed them to go to 200,000 gallons  
24 a day. The problems with Palm Shadows was not the permit.  
25 It's the fact that Palm Shadows did not percolate. It was

1 on a clay bed, and it had -- it would not percolate in.  
2 It may have been within the limits of this facility at  
3 that time, but it did not percolate.

4 Q Well, wouldn't that be covered in the affirmation  
5 where there is an affirmation that the proposed  
6 subdivision will not cause any flow or effluent quality  
7 limits of the facility's individual permit to be exceeded?

8 A No. The permit allowed 200,000 gallons a day.  
9 I'm not familiar with what the flows were at that time.  
10 It shows 1.53. So this would not have exceeded this.

11 Q So was this form accurate on January 29, 2005  
12 when Mr. Kaveney signed it?

13 A It was accurate -- if the numbers are correct,  
14 that the facility flow right now is 1.53 -- 153,000  
15 gallons a day, it could have taken the additional capacity  
16 provided that the ponds would percolate and we could  
17 remove the nitrates.

18 If you take a look at the consent order, the big  
19 question wasn't the fact that it was over capacity; their  
20 concern was nitrates.

21 Q Does your individual permit for this facility  
22 address nitrates?

23 A Yes.

24 Q Well then, again, the language says that the  
25 affirmation is the subdivision will not cause any flow or

1 effluent quality limits of the facility's individual  
2 permit to be exceeded.

3 So would that not apply to nitrates?

4 A. This addition wouldn't have changed the nitrates.  
5 The facility's engineering did not remove nitrates.

6 Q. Okay. So what -- tell me what on this form is  
7 inaccurate.

8 A. The -- I believe the way the form is set forth  
9 it's accurate, but he should not have accepted any more  
10 because we were having problems with the percolation.

11 Q. And how would Mr. Householder have known that?

12 A. That is back to that letter again, saying that  
13 there should be an ADEQ-approved method of disposing of  
14 effluent.

15 Q. And if you -- assume with me for a moment that  
16 Mr. Kaveney told Mr. Householder, as Mr. Householder has  
17 testified, that he had capacity and he had addressed the  
18 problem at Palm Shadows.

19 Is it your testimony that Mr. Householder -- that  
20 it was not reasonable of Mr. Householder to have relied  
21 upon that representation by Mr. Kaveney?

22 A. I don't know. It just -- when you have a person  
23 saying there is no capacity and he has to find a way to  
24 dispose of effluent -- and it's a very small community out  
25 there -- I thought that he should have at least contacted

1 Mr. Stacks or ADEQ.

2 Q And you are aware that he was in contact during  
3 this period of time with Mr. Stacks and ADEQ; correct?

4 A Well, I knew he was in contact with Mr. Stacks,  
5 ADEQ, and the ACC.

6 Q Okay. Now, would you agree with me that there  
7 are significant penalties associated with falsifying this  
8 form, including permit revocation, and the possibility of  
9 fines and imprisonment for knowing violations?

10 A That is what it says.

11 Q And Mr. Kaveney's name and signature appears on  
12 that verification?

13 A I believe that is his, yes.

14 Q So if Mr. Kaveney had knowingly falsified this  
15 form, he would have placed at risk your permit as well as  
16 possibly placed him at risk of going to jail or paying  
17 fines.

18 Would you agree?

19 A He exposed the company by going rogue, and that  
20 is one of the reasons he is no longer there.

21 Q So how did he go rogue when he completed this  
22 form?

23 A Well, you just said that he signed it and exposed  
24 himself to penalties and permit revocation.

25 Q I said if he knowingly falsified this form, he

1 would have exposed the company to permit revocation and  
2 fines and imprisonment. And you said -- you made the  
3 comment about that, that he was going rogue.

4 I want to know, what is it about this form, in  
5 the way Mr. Kaveney completed it, that is rogue?

6 A. Oh, I don't think it's the way he completed the  
7 form; it was his knowledge that the ponds were not  
8 percolating and we could not denitrify.

9 Q. And do you know whether or not Mr. Householder  
10 had that knowledge?

11 A. I don't know.

12 Q. I want to talk about Mr. Kaveney's authority to  
13 sign for a minute more here.

14 At page 22, lines 16 through 22 of his  
15 deposition, Mr. Kaveney testified as follows to my  
16 question:

17 "QUESTION: And was it your understanding that  
18 you had authority from Far West Water & Sewer to sign  
19 documents on behalf of the company?

20 "ANSWER: My understanding is I had a delegated  
21 authority from Mr. Thomas to do the job. Originally  
22 Mr. Thomas used to sign these, and he asked me if I could  
23 take over the task."

24 That testimony is consistent with what you stated  
25 earlier, is it not?

1 A. Correct.

2 Q. So you don't have -- based upon this testimony in  
3 the deposition, would you agree with me that it appears  
4 that Mr. Kaveney believed he had authority to sign  
5 documents on behalf of the company?

6 A. Well, I never disputed that he had authority to  
7 sign within the course and scope of his employment. The  
8 question earlier was when did he get that authority, and I  
9 don't know what that date is.

10 Q. When I asked Mr. Kaveney in his deposition when  
11 he received authority to sign documents on behalf of Far  
12 West, he responded that: "It would have been right after  
13 I hired on, shortly thereafter." That is at page 23,  
14 lines 5 through 9 of his deposition.

15 Do you have any reason to dispute that?

16 A. I didn't think it was consistent with his other  
17 statement that Dusty originally was signing them while he  
18 was there and that eventually, as I understood it, gave  
19 him the authority to sign. So I don't know how consistent  
20 they are.

21 Q. Well, Mr. Kaveney started in September of 2003?

22 A. Yes.

23 Q. And his statement was, "Originally Mr. Thomas  
24 used to sign these, and he asked me if I could take over  
25 the task."

1           Could that not have meant that when he joined the  
2 company originally, Mr. Thomas was signing them, but then  
3 shortly thereafter as he testified he was given that  
4 authority?

5       A.     Reviewing the documents signed by Mr. Thomas, I  
6 don't remember when he signed -- the last one he signed.  
7 I don't know if it was right around that time.

8       Q.     But even if he got that authority a year after he  
9 started to work for the company, that would be September  
10 of 2004, that would have been prior to the time he was  
11 signing documents for Mr. Householder.

12           Would you agree?

13       A.     That's correct. It was my understanding that he  
14 would review things with Mr. Thomas, get approval, and  
15 then sign on behalf of the company.

16       Q.     Okay. At page 75, lines 6 through 16 of his  
17 deposition, Mr. Kaveney states as follows in response to  
18 my questioning:

19           "QUESTION: Now, Mr. Kaveney, when you met a  
20 developer on a line extension agreement, did you actually  
21 prepare the agreement?

22           "ANSWER: Yeah. It was pretty much a  
23 boilerplate. You just changed the dollars and cents and  
24 the name of the company.

25           "QUESTION: Did you actually do that yourself on

1 the computer?

2 "ANSWER: Yes.

3 "QUESTION: So Ms. Phillips did not do that?

4 "ANSWER: No.

5 "QUESTION: And how many main extension  
6 agreements did you prepare when you were at Far West Water  
7 & Sewer?

8 "ANSWER: Oh, Lord. I want to say 30. I don't  
9 know why but 30 rings a bell to me for some reason."

10 Do you have any reason to dispute Mr. Kaveney's  
11 description of how he completed main extension agreements  
12 for Far West Water & Sewer?

13 A. That he did it while on a computer?

14 Q. Yes.

15 A. Or he did them contemporaneously with a developer  
16 being there?

17 Q. Either. Both.

18 A. Okay. He did use a form. And if you notice a  
19 lot of the sewer agreements are all done on the same day  
20 because I found out that he was not doing those. Some of  
21 the water agreements were done after the fact, because we  
22 went through our records and found out that those had not  
23 been finished. That was until we took that away from him  
24 in April or May of 2006 and gave it to Mr. Shapiro to  
25 start doing it.



1       Q.     Mr. Capestro, were you -- you testified several  
2 times now that you weren't involved in the day-to-day  
3 operations of the company in January of 2005.

4               Would you agree?

5       A.     Correct.

6       Q.     Now, when you say we found out that there were a  
7 lot of line extension agreements that had never been done,  
8 are you talking about you personally found that out?

9       A.     It was in connection with an earlier rate case on  
10 the sewer side.

11      Q.     What year was that rate case?

12      A.     2004, early 2005.

13      Q.     That is what case? When was the case filed?

14      A.     I believe it was filed in 2004.

15      Q.     And who was it that discovered that there were  
16 main extension agreements that had not been prepared?

17      A.     I don't remember if it was Mr. James,  
18 Thomas Bourassa, our controller, myself, but I remember we  
19 went through quite a bit and said you have got to get  
20 these done.

21      Q.     And those did not get done because Mr. Kaveney  
22 did not do them as part of his job?

23      A.     I don't know why they weren't done.

24      Q.     Do you know whether any of those main extension  
25 agreements that did not get done predated his employment

1 with the company?

2 A. I don't know. I remember asking him to go  
3 through every single subdivision and make sure we had  
4 them. It was mostly sewer, that he told me he didn't  
5 believe that the sewer agreements were necessary.

6 Q. And how many of those agreements were there that  
7 were not timely prepared and signed?

8 A. We produced those in discovery that were all the  
9 same date.

10 And then once again in April or May of 2006, when  
11 we retained Jay Shapiro to work with us, Mr. Shapiro was  
12 given a list of anything that missed any type of line  
13 extension agreement and asked him to prepare and contact  
14 all the clients to make sure it was done, whether or not  
15 it was a project in progress, something in the future or  
16 whatever.

17 Q. At page 76, lines 2 through 4 of his deposition,  
18 Mr. Kaveney testified that no one else at Far West Water &  
19 Sewer prepared line extension agreements while he was  
20 employed at Far West Water & Sewer until Mr. Shapiro took  
21 over sometime in 2006.

22 Do you dispute that?

23 A. I think that is what I have been testifying to.

24 Q. Okay. Now, these main extension agreements, the  
25 group of them that were prepared at one time by

1 Mr. Kaveney, did you review those at the time?

2 A. I reviewed them after they were signed, and I  
3 believe almost all of them were sewer agreements.

4 Q. How soon after they were signed did you review  
5 them?

6 A. It was while we were working on the rate case. I  
7 can't tell you.

8 Q. I would like to read a question and answer  
9 segment from the deposition. It's a little bit longer,  
10 but I will read it and then I will ask you if you disagree  
11 with anything in it from Mr. Kaveney's testimony.

12 It's at page 78 starting on line 1 of his  
13 deposition transcript. And again, it's my questioning. I  
14 will start with the question.

15 "QUESTION: Now, Mr. Kaveney, I noticed from the  
16 files that I have looked at there are a large number of  
17 line extension agreements that were dated in January of  
18 2005.

19 "Was there anything unusual that happened in  
20 January of 2005 that caused the company to submit or to  
21 sign a large number of line extension agreements?

22 "ANSWER: If my memory serves me correct, it was  
23 discovered that there were a lot of line extension  
24 agreements that never got generated from before I was  
25 here. If I recall, Dusty had found those and said it was

1 a discovery; we never did extension agreements for these  
2 developers. We need to get them going.

3 "QUESTION: Did you prepare those agreements for  
4 developers that had not previously been prepared?

5 "ANSWER: Yes. That was when I was over at the  
6 water plant. I distinctively remember that because there  
7 were a lot of them all at once.

8 "QUESTION: How did you prepare -- strike that.

9 With respect to those agreements that were  
10 prepared late, was the water and sewer infrastructure  
11 already constructed?

12 "ANSWER: Yeah, I went back and pulled the  
13 developer files and got all the data from their files to  
14 complete the agreement itself.

15 "QUESTION: So these agreements were -- they were  
16 prepared after the fact?

17 "ANSWER: Yeah. For the most part we had all the  
18 required materials here that were required to generate the  
19 agreement. The agreement just never got done.

20 "QUESTION: Did you have an attorney review any  
21 of the agreements that you prepared?

22 "ANSWER: No.

23 "QUESTION: Did Mr. Thomas review any of the  
24 agreements that you prepared?

25 "ANSWER: No.

1 "QUESTION: Did Mr. Capestro review any of the  
2 agreements that you prepared?

3 "ANSWER: Prior to Jay Shapiro, no.

4 "QUESTION: So you were, is it safe to say, a  
5 one-man operation with regard to main extension  
6 agreements?

7 "ANSWER: Under a delegated authority, yes."

8 Is there anything in that testimony by  
9 Mr. Kaveney that you disagree with?

10 A. No.

11 Q. Do you know why those agreements weren't  
12 generated in the ordinary course of business?

13 A. As far as sewer was concerned, it was my  
14 understanding that there was a statement that you did not  
15 need to prepare sewer extension agreements. I told him  
16 that was incorrect, and the meeting where Mr. Thomas told  
17 him he had to do them I was present and we were both  
18 talking to him.

19 Whether or not any of them were water -- water  
20 was done at a different time, I don't know.

21 Q. Just trying to nail this down. I apologize,  
22 Mr. Capestro, but were you involved in any way in these  
23 main extension agreements that were prepared after the  
24 fact in January of 2005?

25 A. No.

1       Q.     Is it fair to say that Far West practices with  
2     regard to preparing main extension agreements were lacking  
3     in the early part of the 2000s?

4       A.     I don't know about water. I don't know when  
5     those were done. I know it was the sewer agreements that  
6     he had to do.

7       Q.     And we will get to those agreements in a little  
8     bit here, but, I mean, there were also water main  
9     extension agreements that weren't prepared that were  
10    prepared in bulk in that same time period.

11           Does that surprise you? There are not as many as  
12    sewer, but there were water agreements that were prepared.

13       A.     Prepared in that time period, but if they were  
14    later or not, I don't know.

15       Q.     Well, we will go through that and take a look at  
16    those.

17           At page 24, lines 10 through 13 of his  
18    deposition, Mr. Kaveney testified that he submitted the  
19    main extension agreements to the Commission for approval.

20           Do you have any reason to dispute that  
21    Mark Kaveney was the one that submitted all of these line  
22    extension agreements for approval?

23       A.     Did he state that they were the water agreements?

24       Q.     Yeah, I should correct that.

25           With regard to the water agreements that were

1 submitted late, he said he was the one that filed them  
2 with the Commission.

3 Do you have any reason to dispute that?

4 A. Could you read his testimony again?

5 Q. I'm not sure I have it quoted here, but let me go  
6 to the --

7 Okay. At line 11:

8 "QUESTION: Did you submit main extension  
9 agreements to the Arizona Corporation Commission for  
10 approval?

11 "ANSWER: Yes, I did."

12 That is, I guess, a different question, isn't it?

13 Okay. You know what? I stand corrected. I  
14 don't know. With regard to those late main extension  
15 agreements, I don't know, I guess, who submitted those.  
16 That was a general question about whether Mr. Kaveney did  
17 submit water main extension agreement for the Commission  
18 for approval.

19 A. I believe that the word is late water. I don't  
20 know about the water. It was the sewer that I discovered,  
21 and I asked him to go through every file that he had to  
22 make sure.

23 Q. At page 25, lines 15 through 23 of his  
24 deposition, Mr. Kaveney testified that he prepared and  
25 sent letters of acceptance of water and sewer

1 infrastructure.

2 Do you dispute Mr. Kaveney's testimony on that  
3 point?

4 A. No.

5 Q. What is a letter of acceptance with regard to  
6 water or sewer facilities?

7 A. I believe you have one as one of the exhibits.

8 Q. Do you know what the purpose of that document is?

9 A. I believe the purpose of that document is to  
10 notify the County that we accepted the service so that  
11 they could start issuing building permits. We no longer  
12 do it that way.

13 Q. How do you do it today?

14 A. Individual lots that we notify the County. They  
15 will not issue a building permit unless we give them a  
16 letter saying that we do have the capacity for both water  
17 and sewer.

18 Q. At page 28, lines 4 through 10 of his deposition,  
19 Mr. Kaveney testified as follows to a question that I  
20 asked him:

21 "QUESTION: Mr. Kaveney, when developers in  
22 construction companies submit documentation on  
23 construction, whether that was engineering plans or test  
24 result or certifications, did that information come  
25 through you?



1 "ANSWER: Yes, it did."

2 Now, Mr. Capestro, do you dispute that -- do you  
3 dispute Mr. Kaveney's testimony that documentation that  
4 was submitted from developers in the way of engineering  
5 plans, test results, certifications, that that came in  
6 through Mr. Kaveney?

7 A. To or through?

8 Q. Through -- to and through. Came in to and  
9 through.

10 A. I do know that the plans are delivered to Far  
11 West Water & Sewer, and then they are delivered to whoever  
12 is in charge to be able to review them and then they are  
13 put in the file.

14 Whether or not he went around and picked them up  
15 and went through him to Far West, I guess that is just a  
16 question of semantics.

17 Q. Is that the way things work now or back then?

18 A. I think back then. They delivered -- a lot of  
19 the plans were delivered to the office, and then they were  
20 put on his desk for review.

21 Q. So they went directly to Mr. Kaveney back then?

22 A. I believe so.

23 Q. During the time that Mr. Kaveney was employed by  
24 Far West Water & Sewer, are you aware of anyone else at  
25 the company that would have received that supporting

1 documentation from the developers other than Mr. Kaveney?

2 A. Gary Sims often was requested by Mr. Kaveney to  
3 review the documents. He had been with the company for a  
4 long time.

5 Q. Is Mr. Symmonds with the company today?

6 A. No, he is not.

7 Q. Is he still in Yuma?

8 A. Yes, he is.

9 Other than that, during his last year there,  
10 everything was submitted through Coriolis.

11 Q. In the 2004, 2005 time frame, did Far West Water  
12 & Sewer employ any engineers on its staff?

13 A. None on its staff.

14 Q. During the years 2004, 2005, if Far West needed  
15 engineering review, how would you have obtained that?

16 A. We had a number of engineers in town that we  
17 used. The --

18 Q. Mr. Kaveney in his deposition stated at page 30,  
19 lines 4 through 8, that he was responsible for customer  
20 service and responding to customer complaints.

21 Do you agree with that?

22 A. As a superintendent with the other people below  
23 him I believe so. Whether he responded directly or not, I  
24 don't know.

25 Q. At page 30, lines 9 through 11 of his deposition,

1 Mr. Kaveney testified that Far West Water & Sewer had  
2 frequent customer complaints.

3 During the time period that Mr. Kaveney was  
4 working for Far West Water & Sewer, would you agree with  
5 his statement that the company had frequent customer  
6 complaints?

7 A. Frequent customer complaints about odor.

8 Q. Were there other categories of customer  
9 complaints that were significant in number?

10 A. No. The biggest area you had was odor control  
11 from the sewer plant, and since then we have stopped  
12 trying to correct the odor at the sewer plant. But we go  
13 up line with carbon scrubbers and dioxide to stop the  
14 odor.

15 Q. Is that multiple plants or is that a single  
16 plant?

17 A. Back then it was multiple plants. Now the only  
18 odor you basically have is from the ponds at Palm Shadows,  
19 and that is greatly reduced.

20 Q. At page 34, lines 21 through 23 of his  
21 deposition, Mr. Kaveney testified that all main extension  
22 agreements were kept in his office.

23 While he was employed at Far West Water & Sewer  
24 do you agree that the main extension agreements were kept  
25 in his office?

1 A. I wouldn't know. I know where they are kept now.

2 Q. At page 35, lines 3 through 5 of his deposition,  
3 Mr. Kaveney testified that he maintains the files for Far  
4 West Water & Sewer.

5 Do you agree with that statement?

6 A. I believe so.

7 Q. At page 93, line 16 through 22 of his deposition,  
8 Mr. Kaveney acknowledged that Brian Householder requested  
9 water and sewer service for his Sierra Ridge subdivision  
10 from Far West Water & Sewer.

11 Do you dispute that Mr. Householder requested  
12 service from Far West Water & Sewer?

13 A. No, I don't dispute it.

14 ALJ MARTIN: Mr. Crockett, you have been going  
15 for a couple hours. I want to check with Kate and see how  
16 she is doing and also to see about how much longer you  
17 want to go today because I think it's clear we will need  
18 to return tomorrow.

19 MR. CROCKETT: I think we will need to return  
20 tomorrow. I'm guessing that from this point I'm probably  
21 two hours from being finished.

22 ALJ MARTIN: Okay. Is there a point that you are  
23 coming to to stop today or -- I mean, is there a point  
24 that you want to finish up with today?

25 MR. CROCKETT: I think this would be a good

1 stopping point given we are coming back tomorrow. I mean,  
2 I have got a series of kind of smaller things that I have  
3 been going through.

4 I think you were sending signals.

5 MR. BLACK: I'm sorry?

6 MR. CROCKETT: Yeah, we have been at this a long  
7 time today. I'm tired. I know Mr. Capestro -- I am sure  
8 -- is tired, so I think I request that we break for the  
9 day and come back fresh tomorrow.

10 Like I said, I think I have got about two hours  
11 to go and then I will be wrapped up.

12 I will talk to Mr. Householder tonight. At this  
13 point in time, I'm not sure I have a need to call a  
14 rebuttal witness.

15 ALJ MARTIN: I was a little concerned when you  
16 mentioned you reserved the right to call Mr. Householder  
17 and Mr. Galindo, especially because he is in Yuma, because  
18 that would be problematic.

19 MR. CROCKETT: And that at this point in time is  
20 very remote.

21 ALJ MARTIN: Okay. Mr. Black?

22 MR. BLACK: Your Honor, I would like to revise my  
23 earlier estimate. I probably have half an hour of  
24 redirect, not all day.

25 ALJ MARTIN: Okay. Thank you. Bless your heart.

1 MR. BLACK: Thank you.

2 THE WITNESS: Do I have to show up tomorrow too?

3 ALJ MARTIN: Yes. Yes, you do. Sorry.

4 MR. CROCKETT: Unless you want to let  
5 Mr. Householder sit up there and answer the questions for  
6 you on the record.

7 MR. BLACK: Thank you.

8 THE WITNESS: Whatever makes you happy.

9 ALJ MARTIN: We are on the record still, so be  
10 careful.

11 Mr. Black, anything else?

12 MR. BLACK: Are we starting at 9:00?

13 ALJ MARTIN: I would prefer to start at 9:00.

14 MR. CROCKETT: That is fine.

15 MR. BLACK: Great.

16 ALJ MARTIN: Is that okay? We will start at  
17 9:00, and are there any other housekeeping matters before  
18 we go off the record?

19 No, okay. Let's go off the record -- I'm sorry.  
20 Back on the record for a second.

21 We will adjourn until tomorrow at 9:00 a.m.

22 (The hearing adjourned at 4:43 p.m.)

23

24

25

1 STATE OF ARIZONA. )  
2 ) ss.  
3 COUNTY OF MARICOPA )  
4  
5  
6

7 I, KATE E. BAUMGARTH, RPR, Certified Reporter  
8 No. 50582, for the State of Arizona, do hereby certify  
9 that the foregoing printed pages constitute a full, and  
10 accurate transcript of the proceedings had in the  
11 foregoing matter, all done to the best of my skill and  
12 ability.

13

14 WITNESS my hand this 18th day of January, 2010.

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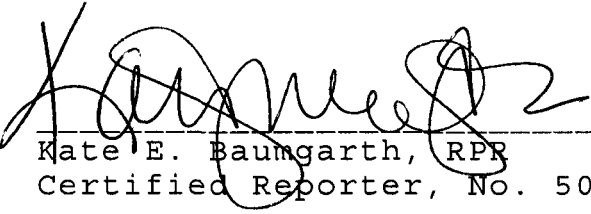
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Kate E. Baumgarth, RPR  
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